

THE *H. Gray*
PRACTICE
OF THE
HIGH COURT
OF 1801
Chancery.

WITH
The Nature of the several Offices
belonging to that COURT.
AND
The Reports of many Cases where-
in Relief hath been there had,
and where denied.

*Nullus recedat à Curia Cancellarie sine Remedio :
Per Cancellarium in 4 H.7.5.*

LONDON,
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THE
GRAND
JURY
OF THE
HIGH COURT
OF
Chancery.

Recd. Apr. 2, 1903.

The Report of many Cases where
the Right had been there had
and where denied.

Investment of the Court in the
the Court of the Court.

1903
The Court of the Court
the Court of the Court
the Court of the Court
the Court of the Court

TO THE
R E A D E R.

Courteous Reader :

THe Title of this Book promiserh much , yet I dare assure thee , no more than the Body of it will afford. And although something of this Subject hath been heretofore Printed, yet (without prejudice to them) I may boldly say, that none hath traced the path of truth so fully and clearly (in the particulars mentioned in the title) as the Composer of the ensuing Discourse hath done. But knowing the Proverb, that *Verbum sapienti sat*, and taking thee (Reader) for one of that stamp, I am resolved not to forestal thy judgment by further Commendations of that

To the Reader.

which (being read and understood)
will sufficiently commend it self :
However I shall desire thee to
pardon and amend the Errata's,
(for without doubt there will be
some) of the transcriber and Prin-
ter ; in confidence of which cour-
tesie, I will give thee passage out of
this short entry into the fair house
of the following tract, *Vale.*

THE Compiler of the ensuing
Discourse hath done. But know-
ing the Proverb, that (as was said)
and taking thee (Reader)
for one of that stamp, I am resol-
ved not to forfeit thy judgment
by further commendations of that
which

THE

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Chancery.

Some Collections of the course of Proceedings in Chancery in English Suits.

THE Original Writ in English Suits, is a *Subpœna* directed to the Defendant *ad Comparendum* at such a mans Suit at the day of the return of the Writ, because of the words of the Writ, (*subpœna Centum libr.*) contained therein, though inserted but *in terrorem*, Plaintiffs may now take forth *Subpœna ad respondendum* before the Filing of their Bills.

The Writ of *Subpœna* to answer, revive, review, resoyn, to testifie, or to hear Judgment is to be served before the return thereof be past, which is done either by delivering the Writ it self under Seal to the Defendants person, or by shewing the Writ under Seal to him, and delivering him a Note of the day of his appearance; If the Defendant be not met with-

Subpœna ad comparend.

How it may be served.

The practice of the High Court

all, the Writ under Seal may be left at the Defendants house or place of usual resort with one of that Family, for him to take knowledge thereof.

Default of appearance.

If then the Defendant upon such service make default, and appear not, then upon an *Affidavit*, made (positive and certain of the day and place of such service of the *subpena*, and the time of the Return thereof, that it may appear that such service was made, if in London or within twenty miles thereof, four days at the least excluding the day of such service; and if above twenty miles, then eight dayes) before a Master of Chancery, that the *subpena* was so served, the Bill of Complaint being then filed (as it then must be) a Writ of Attachment is then of course made out against the Defendant to attach his body, and to bring him in, and such Attachment shall not be discharged but upon payment of usual Costs, and so the succeeding Costs to be double.

Attachment granted of course after filing of the Bill.

A Letter instead of a subpoena to a Baron. If a Baron appear not upon a Letter, then upon motion a subpoena is granted. But if he appear upon the Letter, and departs without answer, an Attachment

Barons of the Realm being Defendants, instead of a *Subpena* have a Letter directed unto them by the Lord Chancellor for their appearance, and a day therein prefixed, which if they neglect to do, then the ordinary process of *subpena* upon motion is awarded against them: If they appear upon the Letter, and after appearance depart without making answer, then they are passed the *Subpena*, and no process then but an Attachment is to go forth against them after appearance, which could not have been upon a Letter only (if he had not appeared) in regard no great Seal was seen.

M. Jac.

M. Jas. the Lord Viscount Norris being Defendant at the Suit of Leicester, coming to the hearing of his Cause, took exception that he was served with a Subpoena and not with a Letter, *ad audiendum judicium*: the Chancellor said, that Letters being but of courtesie, began first in the 16 Year of Q. Eliz. *ad respondend.* and many Letters have been since *ad audiendum judicium*.

The Writ of Attachment is directed to the Sheriff of the County, where the Defendant is supposed to be at that time; And if the Sheriff do return a *Non est inventus* against the Defendant, then a Writ of Attachment with a Proclamation is of course made out against the Defendant, and if the Sheriff return *Non est inventus* upon that Writ, then there issueth out a Commission of Rebellion to such Commissioners as the parties will name, who after they have done their diligence to apprehend the party, and cannot, and return likewise *Non est inventus*, upon motion made of such endeavours and proceedings, and that the Defendant cannot be found, a Serjeant at Arms if the matter in Question be for Lands in the Defendants possession, an Injunction for the possession of the Lands hath been awarded for the Plaintiff *quousque, &c.*

If the Sheriff or Commissioners take the Defendant, they are to take Bayl of him for his appearance upon the return of the process, and upon the *Capi corpus* returned, he answers the Plaintiffs Bill, and pays the Plaintiff his ordinary charges, *viz.* 10 sh. for the Attachment, 20 sh. for the Proclamation, and if he be at Commission of Rebellion 40 sh. and then

goes forth of course.

Lord Norris his Case.

Letters to Sheriffs but of courtesie.

Attachment how directed

Commissions of Rebellion to whom directed.

Injunction for possession of Lands quousque. What the party must do after he is arrested by the Sheriff or Commissioners. Charges for contempt.

The Practice of the High Court

what is to be
done if the par-
ty appear not
after a Capi
Corpus retur-
ned.

he is commonly discharged of his contempt.
If a Capi Corpus be returned by the Sheriff or
the Commissioners, and the Defendant comes
not in upon such Return, a day is given to the
Sheriff upon pain of *s. l.* to bring in his Pri-
soners body, which pain is to be estreated in-
to the Exchequer; And if the Defendant can-
not be brought in, and the Sheriff doubteth
the Bond taken by him will not save him
harmless of such Fines, the same process a-
gainst the Defendant hath been by motion for
the Sheriff renewed, that he may take better
hold of him.

Affidavit a-
gainst Affidavit
not allowed.

Affidavit against Affidavit is not allowed
for avoiding manifest perjury; but the last Af-
fidavit is holden in such cases void, and the
party put to prosecute the first Affidavit-maker
(if he have cause) for his false Oath, as he
may; and no matter of proof or disproof of the
thing in question must be inserted into one Af-
fidavit.

English Bills exhibited in Chancery.

Bills.

If at the return
of the Subpœna
no Bill be put
in, the Plaintiff
shall pay Costs.

A Bill *ad sectam* is the ordinary Bill exhi-
bited in this Court, for relief in equity;
and if the Defendant appear at the return of
the Subpœna, and no Bill be put then in a-
gainst him, he is to have Costs awarded a-
gainst the Plaintiff for such his wrongful vexa-
tion.

Matters in the
Bill ought to be
sufficient.

And such a Bill *ad sectam* ought to contain
in it sufficient matter to entitle the Court to
hold plea thereof, as also wherewithal to
charge

charge the parties named Defendants therein, or else such Defendants may demur upon the Bill.

No Councellour ought to put his hand to any Bill, Answer, or other pleading unless it be drawn, or at least perused by himself in the paper-Draught before it be Ingrossed, and they are to take care that the same be not stuffed with repetition of Deeds, Writings or Records *in hac verba*; but the effect and substance of so much of them only as is pertinent and material to be set down, and that in brief terms, without long and needless Traverses of points not traversable, Tautologies, Multiplications of Words, or other Impertinencies, occasioning needless prolixity, that the antient brevity, Succinctness in Bills, and other pleadings may be restored and observed.

If there be contained in any Bill, Answer, or other pleadings Interrogatory, any matter Libellous, or Slanderous against any that is not party to the Suit upon matters, impertinent or in Derogation of the settled Authority of his Majesties Courts, such Bills, Answers, Pleadings, or Interrogatories are to be taken off the File and suppressed, and the parties severally punished by commitment or Ignominy, as shall be thought fit, for the abuse of the Court; The Councillors at Law what hath set their Hands are liable to the penalty of good Costs to be paid to the party grieved before such Council be heard in Court.

All bills are to be dated the same day they are brought into the six Clerks Office, and no six Clerk is to Auditate any Bill, and

The Practice of the High Court

no under-Clerk is to keep any Bill by him, but with the first opportunity deliver the same to the six Clerk or his allowed Deputy, in his absence to be accordingly filed.

No Bill, Answer, or other Pleading, be truly to be of Record, or to be of any effect in Court until the same be filed with such of the six Clerks with whom it ought properly to be long.

One Bill against several persons for severall causes, or for divers persons for several causes disallowed. Bills of Conformity what they are, and why abolished.

Where divers Plaintiffs for different and several causes have joynd in one Bill, as likewise where a Bill hath been preferred by one Plaintiff against divers Defendants for several and different causes, Bills of both these natures have been disallowed; And Bills of Conformity (which were Bills *ad scilicet* when some Creditors had agreed with their deceased Debtors to remit part of their Debts, and to enforce his other Creditors to do the like) which were lately used are now vanished, having been for the inconveniencie thereof prohibited by Proclamation.

Bills of Reviver by the Heir or Executor, but not by an Assignee.

Bills of Reviver lie where the Defendant having answered the Bill *ad scilicet*, and no further proceedings have been had thereupon, and then one of the parties dieth, whereby that Suit is abated, the Heir or Executor that is interested may have a Bill of Reviver, but for an Assignee it lieth not; *M. Johnson contra Reynolds*, M. 23 Eliz. And Reviver upon Reviver lieth until the Interest of the thing in question be determined.

Reviver upon Reviver.

A Feme-sole Plaintiff taketh Husband, the

If a Feme-sole being Plaintiff take a Husband hanging her Suit, by this her own Act her Suit is abated, and she and her Husband are put to

a Bill of Reviver, otherwise it is where she is Defendant and so marieth; the Plaintiff may still go on in his Suit, which by such her Act she cannot hinder being Defendant. Upon Oath that a *Subpena ad revivendum* was served, if the Defendant doth not come in upon the return thereof (as he may chuse, for it is no contempt) and plead some Plea why the former proceedings should not stand revived against him; upon an *Affidavit* that the process was so served, the cause is to stand revived against him, and all the proceedings, orders, and process thereupon; and the Plaintiff may go on where he formerly left; But the cause doth not stand so revived by a Bill preferred onely until process served, and the day wherein the Defendant is to plead be past, for peradventure he may plead that he is not the party subject to the matter so in demand.

An Executor (his Testator dying after publication) is not permitted to exhibit a new Bill upon that matter whereby to make further proofs, but is to hold to a Bill of Reviver, and so to proceed upon the Examinations so published in his Testators life time.

The Bill called a *Certiorari* Bill, which is a Bill which doth pray a special *Certiorari* to remove a Suit depending in London, &c. upon such suggestions of Equity therein contained, which special *Certiorari* is granted and assigned by the Lord Keeper upon a Certificate of the six Clerks Attorney in the cause, that the Bill is already filed, & a Bond is then also to be entered into by the Plaintiff, which is taken by the Register to prove the suggestion of his Bill

Suit falleth without a Bill of Reviver. Otherwise where she is Defendant. No Reviver until the Subpena be served, and the return be past.

Executors after publication in the life time of their Testators, may not have a new Bill but a Bill of Reviver.

A Certiorari Bill to remove a suit depending in London.

West's Presidents within fourteen dayes of the return of which the Writ is made returnable, *Infra xiiiij dies* of the Receipt of the Writ, &c. If the Plaintiff fail to make his proofs within the time, a *Procedendo* may be awarded to the Inferiour Court, unless the Plaintiff shall get an Order in the mean time for further time to make his proofs upon an *Affidavit* of the remoteness of the Witnesses, as being yet beyond Sea, &c.

257.b. 258.

The manner to proceed in it, ib. 175.

And if the Plaintiff make his proofs within the time, yet those Examinations shall not be after used upon the hearing of the Cause, but the parties are then to proceed in ordinary course in the cause, and so in the Examination of their Witnesses on both sides, the first proofs being onely to give the Court Jurisdiction, wherein the Defendant could not then examine any thing on his part.

Bills of Review what they are, and when to be allowed.

A Bill of Review is a Bill to examine and reverse a former Decree, and is not admitted at all until the party hath obeyed the former Decree in all things wherein the Court can set him in as good state again as he was, if it fall out such former Decree to be reversed: And the Bill of Review is to consist of new matter not heard before, but happening since the decree, or matter resting upon Record or writing not known before, and not upon new proof or Testimony of men.

They must consist of new matter.

Bills to examine witnesses in *perpetuam rei memoriam*.

Bills to examine Witnesses in *perpetuam rei memoriam* were utterly disliked by the late Lord Chancellor Egerton, for that these Examinations are not to be published but upon Oath, that the Witnesses are dead, and that the Witnesses

esses being dead before publication, if any
ave committed perjury, there is no remedy a-
ainst them; and he did order the party to ex-
hibit his Bill upon the Title, and so to pro-
ceed to examination and publication of the
Vignesses in ordinary course, saying, that they
might go to Law if they would, and take the
benefit of these Examinations.

The Defendant hath 8. dayes from the time of
the return of the *Subpœna* to put in his Answer,
which he must do although it be hard all the
end of the Term to take a Coppy of the Plain-
tiffs Bill, and is to put in his Answer there-
unto, which he is to do upon Oath; and if he
fail to do it by that time (unless in the mean
time an Oath be made that he cannot direct-
ly answer the Plaintiffs Bill, without sight
of some Evidences or conference with some
persons that are in the County above twenty
miles distant from *London*) then by the course
of the Court he hath respit given him to an-
swer until the sixth day of the next Term; or
if any Oath be made that the Defendant is
seventy years of Age or upward, or of such im-
potency by reason of sickness or other Infirmary
that he is not able to travel without danger of
his life, in such cases a *Dedimus potestatem*, is
made of course to take their answer in the
County returnable in the beginning of the
Term following, or otherwise an Attachment
is awarded against the Defendant of course, &
no further process as aforesaid.

West's Presidents
190. plit. 48.

*what time is gi-
ven for the De-
fendants answer.*

Pedin. potest.
in what cases
grantable.
Attachment for
default of an-
swer.

Inter Brook & Pawlet an Affidavit was
made, that the Defendant long before had
sworn never to come to *London* any more, and
there-

D. dim. potest. thereupon a *Ded. pot. st.* desired; The Lord denied by reason gerton said it was a foolish vow, and granted of a foolish vow. Attachment against him for his not appearing.

Answer good to The Defendants answer was held good to a common intent. sufficient by the Lord Ellesmere, if it be good 9.E.4. 41. *An-* a common intent.

swer must be But he must answer things plainly and plain and directly to his knowledge, as also of his own unless it may be a means to make him subject to a forfeiture or action at Law; and his Lordship would say the Stat. of 15. H. 6. chap. 4. that if the Plaintiff make not good the suggestions of his Bill, he shall pay costs; but the Plaintiffs leave their proofs of their suggestions, and are never satisfied with Defendants answers.

15. H. 6. cap. 4. ship would say the Stat. of 15. H. 6. chap. 4. that if the Plaintiff make not good the suggestions of his Bill, he shall pay costs; but the Plaintiffs leave their proofs of their suggestions, and are never satisfied with Defendants answers.

Costs for insufficient Answers. For the first insufficient Answer, the Defendant is to pay to the Plaintiff 20. sh. costs, a second 40. sh. and so double to the fourth insufficient answer, and then to be committed and examined upon Interrogatories to be admitted unto him by the Plaintiff, touching the point so insufficiently answered.

Examination upon Interrogatories. and examined upon Interrogatories to be admitted unto him by the Plaintiff, touching the point so insufficiently answered.

No exception to an Answer after a Replication, nisi, &c. Answers are not to be excepted unto after Replication, unless by special Order the Replication be withdrawn, it being unadvised put in by some Solicitor,

After obstinate refusal what may be done. The Defendant being committed, and obstinately refusing to make any direct Answer, the Plaintiff was admitted to the proof upon the points in the Bill, lest his Witnesses should die; Jennings contra Saylor M. Eliz.

Of late, Orders have been granted that

Bill shall be taken *pro Confesso*, if the Defendant lie obstinately in contempt in the Fleet, and after *Habeas Corpus* in open Court refuse to answer by a day prefixed to him.

Bill taken *pro confesso*.

The Defendant himself is not to be examined here upon Interrogatories, unless it be to discover fraud or practice, or in such case as is save, and this notwithstanding the Plaintiff may also examine Witnesses in the cause, and nor to be excluded thereby; but sometimes Lord Order.

4. For without the Defendant assent the Lord would say that he would not order, but the Plaintiff should make his proofs as well as he could, the Suit being here for *Mortgage*, and not as criminal Causes in the Bar-Chamber, and the Defendant hath been examined, and the party concluded by the Examination.

Barons of the Realm have of late time answered upon Oath, though of former times they answered sometime upon their Honour, sometimes upon Oath; And the Lord Chancellour *Wharton* ordered the Lady *Wharton* at the Suit *Willoughby* to answer upon Oath, saying, that upon their Honours did not binde their conscience no more than if they should be permitted to give Evidence upon their Honours a Jury at Law, if a Jury find contrary to which their Evidence an attainr would not lie against them.

Barons to answer upon Oath. Otherwise nor in A swers.

Lib. 8. 48.

An Answer by way of Disclaimer is, where the Defendant upon Oath denies and disclaims to claim, or have any Title to the thing demanded by the Plaintiffs Bill, in which cause

Answer by way of Disclaimer.

cause if it appear the Bill to have been exhibited for vexation only, the Defendant hath his Bill and his costs upon such his Disclaimer: But if the Plaintiff had some probable cause of fear which gave him Ground to exhibit his Bill, he may (if he please) pray a Decree against the Defendant, and all claiming under him for the Bill exhibited, and upon such a Disclaimer the Defendant is to pay no costs.

A Defendant that disclaims may be used as a witness.

If one be named in a Bill amongst other material Defendants, and doth thereupon for his part disclaim; He may then upon motion be used as a Witness in the Cause, otherwise his name might be inserted without Cause, as against him only, of purpose to take away his Testimony from the other Defendants.

A Plea in Bar must be upon Oath.

An Answer by way of Plea in Bar, is when the Defendant plead some foreign matter in Bar of the Plaintiffs Suit, which matter must be pleaded upon Oath, unless it be a matter of Record in this Court, an Outlawry, which must be pleaded *Sub pede sigilli*, or Excommunication on which also may be pleaded under the Seal of the Court.

Demurrer.

An Answer by way of Demurrer is when the Plaintiffs Bill is without any foreign matter alleged by the Defendant insufficient in itself, where the Defendant by way of Demurrer doth but only point out and shew that matter so alleged by the Plaintiff in his Bill; and how the matter is not sufficient to entitle the Court to hold Plea of it, or to charge the Defendant to give an Answer, and that therefore he doth Demur in Law, and demand the Judgment of the Court, whether he shall be compelled

hibited, compelled to make any further Answer to such Bill.

If a Demurrer by course of the Court is to be put in here by the Defendant in proper person, and not by his Counsel, Attorney or Solicitor in his absence, or else an attachment lies of course against him.

A Demurrer doth always admit all the matter in fact in the Plaintiffs Bill suggested to be true, but yet he is not bound to answer the same matter, &c.

Therefore the Lord Egerton, where the Defendant put in a Demurrer, where the matter of the Bill was sufficient to entitle the Court to hold Plea of it, and also to charge the Defendant to make answer thereunto; and the Defendant obstinately standing upon his Demurrer, and refusing to answer, saying in open Court, *Nescit ex missa reverti*, did thereupon decree the matter of the Plaintiffs Bill against the Defendant, which by his Demurrer was so confessed, *wood contra Goth. Doctor.*

Na per Cur' &c. lon un port Bill en le Chancery, et le de Demurre en leu sur le non sufficiency. dill et per advice del Court le Bille est agardenient sufficient, en c' Case le Dr. n'aura damages, car lest' l'one dama' est lon le suggestion c' est trove veroy nient veroy et en tiel Case le verity del mat' est pas trie.

A Demurrer to be put in proper person otherwise nor other Orders.

A Demurrer being over-ruled, further Answer must be made, or else a Decree for the Plaintiff.

No Damages upon a Demurrer and why. 7. E. 4. 14. b. 17. R. 2. cap. 6.

Replications.

Replications.

Replication in what time to be put in.

Dismissal for want of Replication.

Replication must not be of any new matter.

A Replication is to be put in by the Plaintiff to the Answer of the Defendant the next Term the Answer comes in, or in the Term following peremptorily, or else the cause is at course dismissed *ipso facto* with costs, and the next Term after the Answer is put in, the Defendant may at any time give the Plaintiff a day to reply, or else to pay Costs.

A Replication is to be an Affirmation or Averment by the Plaintiff of his Bill, and confessing, or avoiding, or traversing or denying of the Defendants Answer, and ought not to be a departure from his Bill, and contriving new matter, for the Plaintiff is to have his Decree *Secundum formam Petitionis*.

Rejoinder.

Rejoinder within what time to be put in.

After the Plaintiff hath put in his Replication, and the Defendant being served with a *Subpoena* to rejoin, if after the day of appearance he doth not put his Rejoinder by that day or sevennight, or not appearing, and Oath made that the Defendant was so served, the Plaintiff may call for Commissioners names, the Defendants Attorney in the Term time to go to Commissioners to examine Witnesses, and may go *ex parte*, if the Defendant be not there.

en ready to joyn in Commission with him,
d to give him names.

Three Defendants, a Subpæna to rejoyne is
erved upon two of them, if the Plaintiff go to
ommissioners thereupon, he shall not con-
ide the party that was not served by these
the examinations, he not being party thereto.

After a perfect Answer put in by the Defen-
is sent to the Plaintiffs Bill (but not before) Wit-
nesses may of course be examined in Court on
Death parts; but if an insufficient Answer be
iff put in, and then Witnesses examined, and
then the Answer over-ruled, and a better put
in, such Examinations were expressed by the
concord Egerton, and not allowed of at the hear-
g of 44. Eliz. inter the Master of St. Katherines
be and Linsey, and Witnesses are not to be exa-
mined in Court without notice of the names
and dwelling places of such Witnesses first given
to the adverse Party or his Attorney.

But before a Commission for Examination
Witnesses goes forth, the Plaintiff by ordi-
ary course is to reply and serve the Defendant
with a Subpæna for to rejoyne and joyn in Com-
missions, unless the Defendant joyn gratis,
then go to Commissions by assent.

But if the Commission go out *ex parte*, there
being then no assent, the Interrogatories are
always to be included in the Commission.

If the Plaintiff (who hath always of course
the privilege of carrying the first Commissi-
ons, and so until some default be in him) do
not commit any fault in the Execution of his
first Commissions, then the Defendant (if he will)
noth afterwards the carriage of the Commissi-
ons.

And

*Subpæna ad re-
jung. must be
served upon all
the Defendants,
&c.*

*No Testimony
of Witnesses al-
lowed before
sufficient an-
swer be put in.*

*Replication of
course before a
Commission to
examine Wit-
nesses.*

*The Plaintiff
bath alwayes the
Carriage of the
Commissions un-
til default.*

Costs for default of appearance of his Commissioners that hath the carriage of the Commissions.

And if the Plaintiff give warning to the Defendant of the day and place for the Execution of the Commissions, and the Defendant be his Commissioners, and Witnesses upon such warning giving him, and the Plaintiff then fail producing his Commissioners, the Defendant may move, and have his costs for the Plaintiff's such default.

Commissioners not to judge what Inter. are pertinent, and what not.

Commissioners ought not to judge what Interrogatories are pertinent, and what not, but are to examine upon the Interrogatories as they find them according to their Commission. *Baker v. Co. Hill. 9. Jac.* the Commissions were ordered to be renewed, and new Commissioners named, the former being rejected for so doing.

Publication, the course thereof.

Publication how it is to be had.

After a Subpoena served to rejoin, if there be no Commissions taken for the Plaintiff, he (upon Oath made of the serving the Process after the return past) may give ordinary Rules for Publication; and the Defendant putting in his Rejoinder (though given) may do the like, which Rules are first to be ordinary Rules, viz. two Rules given in Ten days to the adverse party to produce his Witnesses, and those being out, another Rule then given, called the peremptory Rule to examine his Witnesses, at which Rule given, the other party may have a course to have a Commission to examine his Witnesses, if he desire it; if he desire not, then a Commission up

that Rule, another is given, viz. That day seven-night to shew cause why publication should not be granted, and after that Rule once given, the party must shew his Cause to the Court, or else publication passeth when the Rule is out.

And this is the course to give such ordinary Rules where Examinations in Court, or *ex parte* by Commissions, or that no Witnesses are examined at all by either of the parties to conclude the adverse party for examining of Witnesses at all.

Either party may give Rules for publication; unless there be special order to the contrary.

But if Commissions be once joyned by the parties and executed; then upon return of that Commissions, either party may give that day seven-night for publication; and then the other publication passeth, unless that other party get some special order in the mean-time to stay publication that he may have yet further time to examine some more Witnesses which he hath yet to examine.

After publication once passed, the parties are not to examine any more Witnesses, unless sometime upon Oath, that he, nor any for him hath seen; or doth know any thing of the Examination whereof the Rule of publication is only passed, and some good reason be also alledged why the party did before so neglect his time to examine them, a further liberty may be by special order given him for a short time to examine them peremptorily, and set down the names of his Witnesses, they being not in the former Depositions, &c.

No examination of witnesses after publication unless in special Cases.

After publication the Court will not suffer a Deposition mistaken to be amended, *contra Pope. M. 39, & 40 Eliz.* C *Hear. be amended.*

After publication on a Deposition mistaken cannot be amended.

Hearing and Proceedings.

A day for bearing may be procured by either party.

The manner of hearings opening of that Bill and answers.

A Witness deposing contrary to be rejected.

16 E. 4, 9. Plit. 10.

Depositions between other parties to be rejected, and so in other Courts.

Deposition between the same parties in a former cause allowed.

AFTER publication past, then either Plaintiff or Defendant (that desires it) may procure the cause to be set down to be heard, which is usually done by some of the same Clerks who knows best how the case stands in Court.

Hearings are in this manner : Both parties appearing, one of the Council for the Plaintiff openeth the Bill, and one for the Defendant the Answer, then commonly one of the most learned for the Plaintiff doth shortly set out the Questions that do arise in the case, and thereupon they descend to read their proofs of such points as be controverted.

If a Witness depose falsely or manifest contrarieties in any material part, he is wholly rejected, and the parties put to read others.

Depositions, though in the same Case, between other parties, are not admitted to be read, unless by special order. So of Depositions in other Courts, but by order, and a day given to the other party to shew cause why not, and none shewn, they may, and then also not such as were examined there after publication of the Witnesses examined in the Cause in Question.

Depositions between the same parties in a former Cause are allowed to be read, but it must be by Order, also the adverse party may prepare to use the benefit of those Depositions also on his part.

No

No Witnesses *viva voce* are admitted at the hearing of the Cause.

No Letters or Notes, nor proved true by some Deposition taken before publication, are to be read at the hearing.

One Witness is not twice to be examined by the same party in the same Cause, nor to be allowed of at the hearing.

If the parties joyn in Commission, and one of them exhibits his Interrogatories (as by court he ought) and the other hath a Commissioner present at the examination of the Commissions to see what is done on that part, but exhibiteth then no Interrogatory on his part at all; He is not after his Commissioners have seen what is examined, then to frame Interrogatories for Examination of his Witnesses, either in Court, or by Commission, for the danger of Subornation or Perjury; The Lord Egerton in the Case of *Beryman* cont. *Beryman* quashed Examinations taken in Court upon such Interrogatories when the Cause came to hearing, the party having examined no other Witnesses.

Neither may the parties (if once they joyn in Commission, and examine Witnesses thereupon) afterwards add unto, or alter those Interrogatories put in.

If the Defendant appear not nor any Counsel for him at the hearing of the Cause, then after the Bill opened, and an Affidavit made, that the Defendant was served with Process *ad audiendum judicium*, the course is to go on with the hearing notwithstanding the Defendants absence this manner, viz. to hear the

No Witnesses *viva voce* admitted Letters or Notes ought to be proved by Deposition.

One Witness not to be examined twice by the same party.

No Interrogatory to be framed after one party be examined.

Interrogatories not to be altered.

The manner of hearing a cause where the Defendant appears not.

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Defendants Answer, and that which he denies and doth not directly confess by his Answer, the Plaintiffs Council are to read proofs for him, and then the matter falling out apparently for the Plaintiff, the Court doth sometimes presently decree the same, but commonly it is decreed, unless the Defendant that made such default shall shew good cause to the contrary, the first day of the next Term.

*Hearing upon
Bill and An-
swer.*

If the Plaintiff go to hearing with the Defendant upon Bill and Answer only, as (if he supposeth the Defendant hath confessed sufficient matter for him in his Answer) he may, then the Bill being opened as aforesaid, the Answer of the Defendant is wholly to be read, which must be admitted true in every part thereof, whereupon if the Court finde cause by the Defendants confession in his Answer, the matter in the Plaintiffs Bill may be decreed for him; But if the Plaintiff must give any other thing in Evidence, then the Defendants own Confession in his Answer, his Cause is not ready for hearing in this kind, but he must go on in ordinary course to reply and examine Witnesses.

*Confession of one
Defendant binds
the other.*

If there be two Defendants, and the one of them confess sufficient matter in his Answer for the Plaintiff; it shall bind himself, but it is no proof to be believed to binde his fellow Defendant.

*If the Plaintiff
procures a day
of hearing, and
attends not, he
is to be dismis-
sed.*

If the Plaintiff procures the cause to be set down for hearing, and then serves no process upon the Defendant, if the Defendant attend and the Plaintiff is not ready, the Defendant hath sometimes been dismissed, for the Plain-
tiff

tiff is intended to be alwayes ready and present in *Curia*; and the Defendant finding the Cause in the Book of Hearings, because he is to be bound by process left at his house (of which perhaps he may have no notice) is enforced for his safety to appear, but if the cause were set down by the Defendant himself, and no process served it is otherwise.

If there be cross Bills exhibited by each of the parties for the same cause, and both Suits be published and ready for hearing, the parties cause that serves not, process shall not be heard, unless the other party also desire it.

Cross Bills ready for hearing a process must be served each upon other.

Decrees.

A Decree is a final Sentence or Order of the Court, pronounced upon the hearing and understanding of the Cause, which Decree being drawn up by the pleadings, and the final Order so pronounced by one of the six Clerks, and signed by the Lord Chancellour, &c. and inrolled of Record, may not be altered upon any motion or Order, but the party is then put to his Bill of Review if he have good cause; which but upon good cause is not admitted, it being both inconvenient for the dignity of the Court, as also for the parties, that Suits should find no end; and such Bills of Review are not admitted but by special order, and then also upon good Bond to pay Costs and Damages as the Court shall think fit, if that Suit also pass against the Plaintiff.

A Decree, quid

Bill of Review.

The Practice of the High Court

Decrees alterable before Inrolment.

If an Order be made for a Decree which is entered with the Register only as an Order, and never drawn up and signed by the Lord Chancellor and inrolled as above said, this is sometimes altered again by another Order, it being as yet but an Interlocutory Order, and not final, until it be passed and inrolled.

No cross Bill after Publication.

If a cross Bill be put in by the Defendant in any Cause, it should be before publication, but not after publication in the first Cause, unless he will go to hearing upon his first Bill, upon those depositions so already published, and this for the danger of perjury that might ensue if the parties again after publication shall examine Witnesses in the same Cause anew.

Decrees sometimes for the Defendant.

Decrees are sometimes made for the Defendant upon hearing of the Cause, the Equity thereof upon the proofs falling upon him, which is much better than to admit a cross Bill to be put in by the Defendant after publication, and that the parties shall thereupon proceed to new proofs.

What persons are bound by a Decree and what not.

No person that claims *bona fide* before the Bill exhibited, and who is made no party to the Suit, is to be bound by a Decree, but such as be parties or claim under him *pendente lite* only.

A Decree binds the person, not the Interest.

Although a Decree in Chancery bind not the Interest but the person, yet the Person may by Decree be ordered to assure the Interest, and his Person lie by it until he perform it. As if a Decree be made that an Obligation be brought into the Court to be cancelled, the Obligation is not thereby made void in Law, neither can the party plead that Decree in Bar

to an Action of Debt brought upon that Obligation at Law, but the person of the Defendant may be committed here until he brings in the Bond to be cancelled and made void according to the Decree.

Decrees upon the Statutes of Charitable Uses.

A Decree made by Commissioners for charitable Uses upon the Statute being so stand until it be reversed by the Lord Chancellor, such Decrees have not been admitted to be impeached by a tedious Suit by a Bill of Review, nor by Complaint in ordinary course, both for the avoiding of charges in a tedious Suit, and also for the delay of performance of such charitable Uses; but some short expeditions by way of Petition only containing the matter fundamental, which have been admitted to be delivered to the Lord Chancellor, to the particulars whereof, the other parties were by his Lordship ordered to be set down summarily in writing their Answers, and thereupon the Lord Chancellor upon the perusal of the Commission decreed, and of the exceptions and answers did give a final Order and Decree in the Cause.

How avoided or reversed.

M. 90. Jac. Purchasers ordered to be examined of the notice of the charitable Uses, the Lord Chancellor saying, *Notum & notorium* must be at the perils of the Purchasers, but *notum & privatum* must be proved.

Notice in Purchasers.

The Practice of the High Court

The Lord Chancellour would say that he would not charge the Decree of the Commissioners in such case in any nice points in Law; the words of the Statute being (*inter al.*) limited and appointed, and the intent and meaning of the Donors being by the Statute intended to be established.

The judicial Process and proceeding for Execution of Decrees,

Execution of the Decree by Writ.

First an Execution of the Decree by Writ, which Writ recites the Decree. and commands the party to perform the same for so much as concerns him to perform.

Serving of the Writ.

The Writ is served either by delivering the party the process under Seal, or a Copy thereof unto him, or by leaving the Writ at the parties house or place of abode, or common resort, under Seal, if he meet not with his person.

Affidavit of non performance of the Decree.

And thereupon, and upon Affidavit made of such serving, and that he hath not performed the Decree, to take out the ordinary process of Attachment, Proclamation and Commissions of Rebellion, which are of course made out against him, as upon a *Subpoena ad compareri*.

Injunction for Possession.

And after all, the process of the Court is spent, if the Decree be for Land, an Injunction upon motion will be granted against him to deliver the possessions of the Land so Decreed to the Plaintiff, and if he be obstinate, then a

Commis. to the Sheriff for Possession. Commission to the Sheriff to put in and keep the Plaintiff in possession.

And if the Defendant in person come not in upon

on all the process of Contempt, but still hide himself, a special Order is awarded against his person to apprehend and bring him in.

And being so brought in and committed to the Prison of the Fleet; he is not from thence to be delivered, and he obey to much of the Decree as is presently to be performed, and put in good Bond for the performance of things executory, and when the time of their performance shall come, and also pay the Plaintiff his Costs in prosecution of such his contempt.

And the party still continuing in the Fleet in such his obstinacy, to enjoin him by a day given him to perform the Decree, which he upon notice refusing to do, to set a Fine upon his head in open Court for such his Contempt, and to enter it, and to award process out of the petty Bag to the Sheriff, where he hath any estate to levy it, and to pay it into the Hammer; for in the latter end of the Lord Elefmore the Fines being estreated into the Exchequer were too much disputed here by some Lawyers, as it was then thought.

If the Defendant (so being committed) will continue still wilfully in Prison, and yet not perform the Decree, then he may be committed close prisoner until he shall perform; and in *W. bb* and *Braithwaits Case. M. 9 Jac.* his Wife and Children were restrained to come at him, he wilfully lying in the Fleet upon such Contempt.

And in some cases of such obstinacy, a Sequestration hath been granted; as where a Rent out of Land hath been decreed, and the parties obstinately refuse to pay the Rent and

Order to apprehend a person in Contempt.

Imprisonment until performance of the Decree.

Party in Contempt fined and levied by the Sheriff, by process out of the petty Bag.

Close imprisonment upon wilful contempt.

Sequestration of Lands for the Rents issuing out of them.

and Arreages, the Lands out of which the Rent issueth have been Sequestred, that but the profit thereof the Decree may be satisfied.

**Sequestration
for purchase
money unpaid.**

So where a man gets an assurance of Land for money to be paid by him, and having the assurance, would not pay the Purchase money but being decreed to pay it, lies obstinately in Prison, and holds the Possession of the Land sold, and not paid for: For that the Land was Sequestred *quousque*, inter Rumney and Hall. 4 Eliz. So inter Mon and Bicham. 90. Jas. Defendant being trusted by the Plaintiff's Father at his death, to receive the profits and Rents of his Lands to the benefit of his Son within age, to be accompted for and paid to his Son at full age, and it being proved that the Defendant had received much money, and being decreed to pay the money so received to the Plaintiff, and obstinately (being in Prison) refusing to pay it, a Sequestration was granted of his Lands purchased with that money *quousque* &c.

**Of what Lands
a Sequestration
may not be.
Dismissal in-
rolled not to be
altered.**

But Sequestrations are not used to be granted of Lands that had no relation to the thing in Demand. *Crompt. Ju. 63.*

A Dismissal also is a final Sentence of the Court, as is a Decree, and if a Dismissal be upon a full hearing Ordered and Decreed, and so then drawn up signed and inrolled, it is a Decree; it may not be altered by any motion or order after for retaining thereof nor any new Bill exhibited, but upon such new matter as aforesaid in Decrees, and by such special Order.

But if the Dismissal were only for want of

pro

secution, and not upon the body of the Dismissal for
 trer, then sometimes upon motion and ex- want of prose-
 le of slackness, the Plaintiff is by special or- cution not pe-
 permitted to exhibit a new Bill, or to re- remptory.
 in the former and to go on with the Cause,
 then some short time limited peremptori-
 for the effectual prosecution thereof to the
 iring.

If the Plaintiff hanging his Suit here, go to
 w for the same Cause for which he hath
 fore exhibited his Bill here, he is upon mo-
 on to be dismissed with good Costs but if he
 first at Law, and exhibited his Bill here
 the same Cause after, an Election hath been
 ed either to go on here and stay the Suit at
 w, or to go at Law and to be dismissed here;
 and if he go on here, he is to stay his Suit
 Law, and not double to vex the Defen-
 nt.

*Dismissal, if
 the Plaintiff
 prosecute the
 same Suit at
 Law.*

If the Plaintiff enter into the Lands in questi-
 hanging the Suit here, because he makes
 himself his own Judge, he hath been dismissed
 ence, M. 90. Jac. inter illu and Moris Mill. Suit.
 it was ordered that for so much of the Land in
 ession as he had in Possession before his Bill
 hibited, his Suit should still go on here, but
 for so much as he had entred into hanging his
 uit here, he should be dismissed.

*Dismissal for
 entry into Lands
 hanging the
 Suit.*

A Dismissal is not to be moved for by
 the Defendant upon the matter of the Plain-
 iff's Bill before a Demurrer, Plea or Answer
 e put in unto it by him.

*Dismissal not
 to be moved
 for by the De-
 fendant before*

In all contempts committed against process
 of the Court, either in disobeying the original
 process of the Court in Causes between party

*Demurrer, plea
 Answer.*

and

The Practice of the High Court

*Examination
upon Interrogato-
ries touching
Contempts.*

and party, viz. in not appearing upon the *adfectam*, or in disobeying the Writ of execution of an Order or Decree of Court whereupon process of contempt issues, as attachment, Proclamation and Commission of Rebellion, &c. If the parties come not in on any of the same compulsory process, he may be examined upon Interrogatories to be in by the adverse party touching such his contempt before he be committed to Prison wherein if he excuseth himself upon his Examinations the party at whose Suit he is attached, is to pay him costs to be taxed by a Master of the Court, unless the Plaintiff thereupon require a Commission or time to prove his contempt, and do it by the second return after the Term following.

Contempts.

If the Plaintiff take a commission to prove the contempt, the course is that the Contemners shall put in no Interrogatory nor examine Witnesses, but the Plaintiff, neither is such Contemner to name any more but one Commissioner in such Commission, who may be present at the examination of such Commission on for the Defendant to see direct carriage in the examinations only, which course hath been such in hatred of Contemners: And if the Plaintiff then fail in proof of the contempt, then the Defendant is to be discharged of the contempt, and to have good costs: And this is the course of the Court between party and party: But if any offence or contempt be committed against the Court, or against the great Seal by word or deed upon serving the process then upon Affidavit there made, the party

*Contempts against the Court
and great Seal.*

the were snapped up and committed immediately
without any examination of him at all; for
Compter it were (if the Affidavit should prove
as true) no suffer that mischief to one particu-
lar person, then the inconvenience that such
in a high Court of Justice (as is the Chancery)
the process or authority thereof should be con-
demned: And if the Affidavit-man hath
his made a false Oath, the party committed is left
Prison take his remedy against him as he may; yet
s Elsewhere there hath appeared suspicion in the
Oath, and the worth of the party against
Machom such Affidavit is made, hath been
renewed to the Court, sometimes an examinati-
on hath been known, and by order permitted,
but that very seldome.

Upon the return of rescue by the Sheriff *No averment*
upon an Attachment, and so also by Commis- *against a rescue*
sioners upon a Commission of Rebellion, the *returned by the*
party is likewise presently to be committed for *Sheriff.*
his contempt, for no averment lies against
such Return.

The Lord Chancellour Egerton would say, *Contemneys not*
that persons in contempt are by course of the *to be heard in*
Court not to be heard in that or any other *Court till their*
cause, until they have discharged their con- *contempt be dis-*
tempt. *charged.*

If the party appear upon an Attachment or *Departure after*
of other process of contempt, and depart without *process of con-*
his license of the Court, he is to stand committed *tempt, imprison-*
per saltu, *M. 10. Jac. Haselwood contra Clifton. ment ipso facto.*
the Defendant ordered to answer within a
week, or an Attachment against him for his
contempt, and in a Case then between the
Duke of Lenox and the Lord Clifton, the Lord
Chan-

*Noble-men to be
committed for
Contempts.*

Chancellour Egerton said, if Noble-men w
commit Contempts, they are to be committe

Motions and Orders Interlocutory banging.

Motions.

MOtions more than needful, and not tending to the end of the Cause, are many times the cause of long and tedious Suits in Chancery: Some have conceived that they need but one motion in a Cause, viz. for an Injunction for the quiet possession as at the time of the Bill exhibited, and for staying Suits at the Common Law, in the mean time till the Cause be determined here; And the other motions for the must part might well attend the hearing of the Cause, which would be soon ready for the hearing, if Causes might go on in ordinary course by pleadings and process without being crossed by motions, one motion begetting many, whereby the Court is much troubled, and the Suitors delayed, desiring an end of their Suits, and not *move*; and *move*. But apparent it is that such motions only as tend to the end of the Cause, and not to put it out of the way, are good for the Suitors, and ease to the Court.

Counsel in motions misinforming the Court.

The Counsel that misinforms the Court in his motions, or moves not informing the former order in the Cause, hath had his order forgotten, thereby vacated; and Costs awarded to be paid by himself or his Client, by himself if it lay in him to have informed himself better.

or else by the Client who misinformed his
council, and while this course was used little
as there of references to consider of the truth
such Informations; The Councellour in re-
spect of his credit, and the Client for fear of
such costs being then careful not to misinform
any thing, which they were sure to hear of
again by motion of the adverse party, to the
next motion day.

Injunctions after answer are not common-
granted but upon matter confessed or proved
manifestly appearing by some Deed then
shewed in Court; But if the Defendant sits an
attachment, and comes not into answer, then
they have been usually granted till he appear
and make a perfect answer; So if the Defen-
dant procure a *Ded. pot.* and having that favour
will proceed at Law in the meantime till the
Defendant put in a better answer; So if the
Defendant delay his answer by making Oath
that he cannot answer without sight of evidence,
or conferring with some person in the Country,
thereby he hath a respite to answer till the
next Term, and to proceed at Law in the mean-
time.

Injunctions for the stay of felling of Woods
specially of Timber, it being *pro bono publica*,
and no hurt to the party interested to let them
grow a little longer, whereby the increase is
to him that hath right, have been usually
granted.

Warwick Hospital contra Feilding. M. & Jac.
L. Chancellour Ellsmore said, that Chur-
ches & Hospitals lightly go down by tryals in
the Country, therefore staid by Injunction.

*Injunctions upon
Contempt.*

*Injunctions upon
stay of an-
swer.*

*Injunctions for
the stay of fel-
ling of Timber.*

*Churches and
Hospitals not
fairly dealt with
in the Country.*

**Injunction upon
2. E. 6. for
Tythes.**

Injunction have been ordinatily granted the Lord Ellesmore to stay all Suits upon Stat. of 2. Ed. cap. 13. to recover treble mages for not setting out of Tythes; but mitting them how they will otherwise for Tythes.

**Injunction for
stay of execution
of judgement
upon consent.**

Injunctions have been usually granted him where judgement hath been entred by sent (a course lately frequent for security money) to stay Execution of such Judgement:

**Injunctions
where 3. actions
are for one
thing.**

Hill. 9. *Jac. Duncumbe contra Randall.* 8. Actions at Law for one cause; Lord Egerton this is Barrctry; stay them all by Injunction.

**Injunction pray
for that the
Plaintiff had
other security,
and denied.**

Home emant surety pre aut' & n'voit biens ses maines a s'aver luy harmelles; & au'y obligation al & intent quel il mist en suit, & Defendant Ministre le mat' en Chauc'ry & injunction, mes suit denie 16. E. 4. 9. plit. 10.

**Injunction upon
trials by Ejection
one firme.**

Lord Chancellour Egerton, Hill. 9. *Jac. Holland and Buttel* in granting an Injunction stay the trial in an *Ejectione firmæ*, called the pick-purse Actions, in which the parties butt out. vye one another, and he that had last Angel prevailed, and said that an *Ejectione firmæ* before Ed. 1. time was not used against Stranger; but only against the Lessor, and trespass where damages only are to be recovered, the Plaintiff there may be driven to make Title, but in this not.

**Injunction to be
dissolved for not
prosecuting.**

If the Plaintiff having once gotten an Injunction, do after foreshow the prosecution of his cause, and proceed therein with effect, his Injunction hath upon motion been dissolved.

ved, If upon a day given him he hath not shewed good cause of such his delay.

Motions are many times made concerning the well going forth and execution of Commissions to take Answers and examine Witnesses, and for such other matters of course, as for slackness in prosecution, &c. which have been commonly referred to four of the six Clerks, not toward the cause, who hearing their two fellows retained in the Cause, and seeing their backs did easily resolve the same without any delay or charge at all to the Subject.

Motions concerning Commissions, examination of witnesses.

Orders after Decree passed are never granted to retreat from the Decree, but onely to go on further and effect the Decree, as in cases of Sequestration aforesaid, or after process of the Court spent; A Commission for possession of the Land decreed, and the like at *supra*.

Orders never pass against a Decree, but to confirm it.

References to report in any cause are a great hindrance to the proceedings in the cause, although in some causes they may be necessary for the ease of the Court in expediting of causes, and to make the matter easier and readier against the hearing thereof, namely, a reference for the casting up of Accounts, perusal of Court-Rolls and Writings, &c. things which otherwise might hinder and be tedious to the Court and proceedings in more important matters.

References.

A short point of a Demurrer of or an insufficient Answer being especially opened might be soon resolved by the present opinion and order of the Court, it requiring no more time in opening and present deciding, then in opening

Demurrer upon an insufficient answer referred.

D

and

References and reports thereupon unnecessary, and tending to delay.

and referring the same, for without opening the points wherein the defects are, no answer in effect shall be referred at all.

And when a report upon such reference comes in peradventure exceptions may be taken to the report and thereby cause a new reference; all which ariseth to the great delay of the cause, and it is conceived if this Court were held in this to have the point of insufficiency openly moved in the Court, the Counsel which sometimes demurr onely to win time and sometimes to put in frivolous answers would be more wary; and dare not so openly affront the Court, if the Court it self would judge of it: and now many times motions are made for referring an insufficient answer which he that moves never knew whether it be insufficient or not.

Reference of the Bill, answer and state of the cause prohibited, and why.

References of the Bill, Answer, and the state of the cause (which hath been by the Lord Ellesmore divers times prohibited, and yet lately hath been used again) hath been a great scandal to the Justice of the Court, and very chargeable to the Suitors, and most commonly *cum in circuitu ambula-verint*, the Plaintiff is said to reply, and so to go on again in the ordinary and true course. And so in a judicial hearing in open Court, after he hath been by such references for a large time delayed and perplexed within these 9 or 10 years last past, Justice being done with expedition to the liking of all Suitors, there were very few references to report in any cause, unless for matter of account *ut supra*: That the parties by mutual assent sometimes desired such reference to Merchants

concerning the Trade of merchandizing; but if either of the parties Plaintiff or Defendant had in any cause dissented, and desired the ordinary proceedings and Justice of the Court, of the business then in reference.

Costs of Suit are sometimes given to the Defendant, when the cause is dismissed hence, if it appear he was vexed by the Plaintiff, and the costs are commonly very moderate, namely 20 sh. or 40. sh. But if the Plaintiff had *probabilem causam litigandi*, then no costs but dismissal without costs.

when the Defendant shall have costs, and when not.

Damages are also sometimes given to the Plaintiff, when the cause is decreed for him, consideration being therein had before, of *lucrum cessans & damnum emergens*. No damages where the contract is usurious.

where the Plaintiff shall have damages.

Pasc. 14. Eliz. upon a Writ of Error brought into the Kings Bench upon a Judgment given in the Common Pleas in an *Audita querela* concerning an Execution upon a Statute Merchant acknowledged at Preston in *Amdon* in *Com. Lancast.* which was certified into the Chancery; the Kings Bench directed a *Special Certiorari* to the then Lord Keeper Egerton with a *Mandamus quod scruteis Rotul. Cancel.* to certify *quod inde veniret*; But the Lord Keeper refused to certify, saying, they had no such Warrant to command the Certificate of any Record out of the Chancery, onely acknowledged that the Master of the Rolls hath sometimes brought in his hand some Records to inform them of the Kings Bench, *Lamberts Reports*.

Special Certiorari with a Mandamus to the Lord Keeper, who refused to certify or bring in the Record out of the Chancery.

The Chancery hath a Sovereign power above

Prerogative the Chancery.

Bill directed to the King in the vacancie of the Lord Keeper, and how Justices of other Courts by what Authority they sit.

above all other Courts of Equity, it being Court of the distribution of the Kings conscience, and Bills are exhibited here in the vacancie of the Lord Keeper or Chancellour his own Royal Person, viz. To the Kings most excellent Majesty in his Highness Court of Chancery.

The Justices of the other Courts at Westminster, have their Authority by Writ or Patent under the Great Seal of England, being the Seal of the Chancery which is committed to the Lord Chancellour or Keeper by the King, together with the distribution of his own conscience.

Teste of the Chancery writ Teste meipso. Chancery always open.

The Teste of the Chancery writ is Teste meipso, of other Courts the chief Justice of the Court.

Errors in Chancery where reversed. Chancery in the Cinqueports.

The Chancery is ever open, and is not adjourned by the adjournments of the Term, Juris. 7.44 E 3.

Error here is reverfable in Parliament only. 37 H 6.16. Ashton, Denby and Choke, by Special Commissions from the King.

The Cinque-Ports have a Chancery, as do by Prescription and Suits, have been maintained here by resolution against them there, H. 53 Eliz. the Cinqueports privilege was over-ruled here; inter Shelton & Godfrey & alios. M. 38. Eliz. inter Cheynel & Godfrey upon a report of Dr. Cartwright and Mr. Lambert the Cinqueports privilege over-ruled here.

Chancery in the Universities.

The Universities of Oxford and Cambridge have Chanceries by Charter, which sometimes have been admitted here sometimes not, as

plea

pleased the Lord Chancellour, *Beard* and *Dr. Kettle*. *Oxford* priviledge pleaded and over-ruled, and the *Dr.* ordered to answer here with 20 sh. costs, *Hill. 9 Jac.*

Courts established in the North parts, and in the *Marches of Wales*, have jurisdiction of equity, but when they have enjoyned some not to sue here, they have been checked for it, *inter Rutland Comit. & Joans M. 10. Jac.* one committed by the Lord *Elhesmore* for serving of an injunction out of the Court of Wards upon the Plaintiff here to stay him.

39 *Eliz. inter Caymond & Mordex*, the Court of Requests not allowed priviledge here.

Inter Grosham & Stone, M. 9. Jac. *Stone* pleaded priviledge of the Exchequer, the Chancellour said, no Exchequer man is priviledged against the Chancery, nor the Lord *Bacon* himself, except the matter concern the King, and said, that if the Defendant did endeavour to get an Injunction (as was informed) to stop this Court, he would commit him, and said, he would know those Lawyers that occupy their wits to juggle Jurisdictions of Courts together.

Hartop cont. Hartop, M. 37 Eliz. An Exchequer Injunction disallowed, and the party that procured it sent for by a Pursivant, and committed.

The Jurisdiction of the Countrey of *Chester*, over-ruled here when either of the parties dwell here, for their circumscribed and limited Jurisdiction cannot doe Justice in such cases, having no means to bring in the party, *Egerton cont. Kelly & al, H. 11 Jac.*

Chancery Courts in the North and Wales.

No Court or person priviledged against the Chancery.

Injunction out of the Exchequer disallowed.

Jurisdiction of Chester.

The Practice of the High Court.

Trin. 5. Eliz. 6. Register Book fol. 78. Prestland vers. Sugax & uxor. The Suit being there for a Capital Mess. and Lands in S. in Com Chester. A Sequestration was granted till the Cause determined here upon the Defendants setting out a Commission of Rebellion for not appearing here.

Jurisdiction of the Dutchy.

M. 9. Jac. Tildesley moved for the jurisdiction of the Dutchy, but the Defendant not having pleaded that it was the Dutchy Land in his Answer was not permitted to speak now at all of jurisdiction.

Supreme power of the Chancery.

So the High Court of Chancery being the supreme Court, in which the Lord Chancellor judgeth as by the Kings own Conscience, no reason that any shall be restrained to sue for Equity, which cannot be so delegated, but that there remains still a supreme power therein in the King.

Note.

The priviledg of Defendants and Witnesses in Chancery, cundo redeundo & morando.

All Defendants in Chancery and Witnesses brought up by process to be examined, are priviledged *cundo redeundo & morando*, for their necessary attendance here, and if any be arrested they are to be delivered by *Superfedeas* of priviledge, and the party that arrested him commonly committed for his contempt.

No Superfedeas by way of protection, but to Officers and Ministers of Court.

Rodny Ar. sought by Petition a *Caroli* (for that there were many that sought to arrest him at Law) to have a *Superfedeas* of priviledge as a Protection to keep him from arrests, which none may have but Officers and Ministers of Court. And no Suitors are to have a *Superfedeas* of priviledge, but to deliver them after they be arrested, and not to have it beforehand as a Protection; and herein the

Clerks

Clerks returned their Certificate to the Lord Keeper, 2 Car. in his verbis, ff. We do not find any ancient president for a Writ of privilege by way of petition for such as are Suitors, and having Suits depending in this Court, but for being brought up by process and then arrested in their coming, or necessary time of attendance, or return home, a *Superfedeas* of privilege *de arrestari & p. nitus deliberari* hath been usually granted.

The dayly Attendants and Ministers of the Court of Chancery, may not against their wills be sued elsewhere out of the Court here, otherwise than for freehold or felony; but are discharged by *superfedeas* of privilege of all Suits, *The privileges of Attendants, Ministers and Clerks of the Chancery.*

Tempor. R. 3. Jo. de Leicester a Clerk of the Chancery being sued in the Common Pleas in an Action of Debt, suffered judgement to be entered there against him by default, and then by Writ of Error removed the Record into the Kings-Bench, after which by a special *Certiorari* in that behalf, directed from hence into the Kings-Bench both for the one and the other reciting that the original Cause *de iure* did belong to the Chancery, was hither removed to be here only proceeded in, if the party so thought good, *In Rot. claus. de A. R. 3. memb. Terri London.*

So the cause of Justice Yelverton and Dewes one of the six Clerks, where Dewes was delivered by *Superfedeas* of privilege against Justice Yelvertons arrest (being a Judge of the Kings Bench) by the Lord Chancellour Egerton, which he had then ready in his pocket. *Dewes one of the six Clerks, privileged against Justice Yelverton.*

A Defendant coming to execute a Commission

The Practice of the High Court

mission, being arrested, had a *Corpus cum causa*, and was let at liberty, *Inter Jackson and Vaughan*, T. 34 Elix.

A Plaintiff arrested here, when he came to examine his Witnesses, was discharged by Superedeas of privilege, *Bannister cont. Bond. T. 34 Elix.*

A Plaintiff coming to follow his Cause half a year after his Bill exhibited, was arrested in London, and had his privilege in 31 Elix. in appearing that he came up only for the Cause sake.

Mossley coming into the Court to shew cause according to an order made here therein, and returning home again after his Cause shewed, was watched, and arrested by Bayliffs of *Midsex*, whereupon the Bayliffs were presently sent for into the Court and committed, and *Mossley* discharged by the Chancellour *Egerton*.

A Plaintiff being arrested by the Defendant in coming to execute a Commission and Attachment was awarded against the Defendant, *Church contra Sedbine*.

A Plaintiff is forma pauperis not admitted to sue in Chancery but of late time.

A *forma pauperis* hath heretofore been seldom admitted to sue in Chancery as Plaintiff, except in some causes of consideration, and the causes being of worth, but referred originally to the Court of Requests, or to the Provincial Council, if the causes did arise within those Jurisdictions.

And thereupon the course hath been (which was constantly observed by the Lord Chancellour *Egerton*) that when the Plaintiff did begin his Suit here, without being then admitted

red in *forma pauperis* to possess the Court thereof, that then hanging the Suit, he should never] (to delude the Court) be admitted in *forma pauperis*, but go on as he began.

But the Defendants have been admitted to defend in *forma pauperis* (upon Oath that they are not worth 5 pound their debts being paid) both in the beginning and hanging the Suit here.

Of late time both Plaintiff and Defendant in the same cause (against all order) have procured admittances in *forma pauperis* on both sides, which hath much pestered the Court, most of their Suits being Suits of vexation, or to have some countenance to beg by, and commonly their causes coming to hearing after many clamours, do appear no other.

A vexatious Plaintiff in *forma pauperis*, and A Plaintiff in *forma pauperis* not able to pay Costs upon the dismissal, hath been ordered by the L. Egerton to be whipped, *whipped, when* upon the equity of the Stat 23. H. 8. cap. 15. *not able to pay* and no more to be admitted in *forma pauperis*, *Costs.*
Knap. contra Knap. Hill. 9. Jac.

Causes usually relieved in Chancery.

A Man is bound in an Obligation with a *Accident.* penalty to pay money here at a day, and coming up with it, is robbed by the way or some other casualty befalls him.

So if Rent reserved upon a Lease, with condition of forfeiture for non-payment at a day, & some such accident happens.

So

willful default
or gross negli-
gence not re-
lievable.

Part of the mo-
ney paid and the
Obligee sue for
all.

Money paid to
the servant of
the usurers Bro-
ker, who runs a-
way, and the Ob-
ligor relieved a-
gainst the Bond.

Oblig. satisfied
without a quit-
tance relieved.

Order for fur-
ther assurance,
where time for
making it by a-
greement is
stippled.

Divers Obligees,
one is sued, ho
prayer contribu-
tion against the
rest, and decreed
accordingly.

Willful forfei-
ture of a condi-
tion relieved.

Copyhold Fines.

So of a Mortgage the Lord Egerton saying in
the cause of *Pelham and Seimour*, that in equi-
ty they are but to make advantage of willful
default and gross negligence.

So if most part of the money be paid, and
the Obligee sue the whole Bond, *Hill. 9. Jac.*
Rotheram Knight against *Harrington* the Plain-
tiff paid the debt due by the Bond to *Dean* the
Broker, of whom he first received the money,
Dean's man runs away with the money, the
Plaintiff was discharged against the Defendant
by the Lord Egerton, he saying, let the Usurer
and Broker reckon together, and the Plaintiffs
Bond was ordered to be delivered up, to be can-
celled.

A man payes a debt due by a simple Obliga-
tion, and takes not in the Bond nor any ac-
quittance under Seal, he is to be relieved.

The time of demand of further assurance of
Land being past, though no remedy at Law,
yet ordered here to make further assurance,
Rempe contra Rempe. M. 9. Jac.

Divers are bound in a Bond, one of them is
only sued, he brings his Bill in Chancery a-
gainst the rest to contribute, and decreed ac-
cordingly, *Fleetwood contra Charnock Trin.*
1629.

An Engail cut of contrary to a condition in
the conveyance only to make his wife a Joyn-
ture, and then the remainder in tail settled a-
before; the forfeiture was relieved here, *B. yly*
cont. Ric. 38 El.

As in *Gates* for Copyholders for Fines ar-
bitrary to have them reasonable, for where cust-
oms are once restrained by the Lords in some
case

Cases not being regarded by the Common Law, remedy hath been had here.

A Tenant for life, rem. for life, rem. in Fee; the first Lessee for life commits Waste, it is a wrong prohibited here, and yet no remedy at Law for it. *Waste, relievable here, where there is none at Law.*

Neither doth every Estoppel (being but a fiction in Law (as the Lord Egerton called it) binde here, but the party may be relieved according to the reality of the Cause here. *Estoppel, how relievable.*

One assures the consideration of 40. l. received to assure Land, an Action upon the Case only lies at the Common Law to recover damages, but to have the Land assured according to the bargain a Suit lies here, *Assumpsit to assure Land.* King contra Rylton. Tr. 39. Eliz.

So when an Action upon the Case lies at Common Law for an Answer, in which Damages are only to be recovered, to avoid multiplicity of Suits, and to amend Answers, remedy hath been here, *H. 9. Jac. Houker contra Tayler.*

A Lease omitting the Lessees name in the Demise, it being so set down in the Habend. relieved here, *Lessee's name omitted in the habend relieved.* Butler contra Doddington, 22. Eliz.

An attornment or Deed relieved here, where no help is at Law, *Attornment.* Hinch contra Fowler, Tr. 36. Eliz.

Mich. 5. Jac. Shute contra Mallory, a Lessee for years made a Lease of part of his Term, rendering rent to Mallory, and after granted the remnant to Shute, Mallory having such a Lease refused to attorn or pay any Rent, and no remedy at Law being against him, an Attornment was ordered and granted here, the Lord Egerton.

Relief in Chan-
cery against a
mans own Re-
lease.

Egerton saying : He ought not in Conscience to hold the Lease without paying his Rent.

One runs away with 3000 l. with which he was trusted to lend out, and for a long time hides himself, and writes unto the party, that if he will be content with 500 l. again, and give him a discharge and general release for the rest, he will pay him 500 l. The Creditor not knowing otherwise how to come by him or any of his money, did release and receive 500 l. yet after was reliev'd here for the rest, notwithstanding his own Release to Lake a Scriviner, for by the Lord Egerton, *Potentia fit injuria & dolose fit inductus ad consciend. int. Petre & Monsham. 40. El.*

Norferd contra Prockter M. 1 Jac. The Defendant having gotten a Release of the money by circumvention, because he could prove no payment thereof, nor consideration, for there was decreed by the Lord Egerton (notwithstanding his release) to pay the money.

Relief in Chan-
cery after
Judgement at
Law.

After Judgement had in an Action of Debt upon an Obligation brought in a foreign County, wherein the Bond was not made, which was done (as was affirmed) to hide the truth, which cannot be so well found out in any place as in the proper County, the Defendant was thereupon relieved in Chancery, 9. E. 4. 24.

Relief in Chan-
cery after
Judgement
how.

For relief in Chancery after Judgement at Law, see those Resolutions commanded by his Majesties privy Seal, to be inrolled here in *Rotulum patentium de A. 14. Jac.* And also the Royall decision of the King in the Star Chamber entered the same year with the Register of this

this Court; neither doth this Court meddle with the Judgement, but deals with the corrupt conscience and person of the party, *Joh. 29. v. 17. Perfringbam molares iniqui & de dentibus illius auferebam pradam, &c.* Vouched upon an unconscionable Judgement and Execution gotten at Law, and then relieved here, *Peggeon & Addinton M. 15. Jac.*

In *Farmers Case* the party relieved here against a Fine levied by circumvention, &c. *Rushy contra Maffield*, a Decree made against a Fine procured against an Ideot, *Trin. 10. Jac.*

Relief against a Fine levied by circumvention.

After Judgement acknowledged the Cognusor sells his Land, and after that a new Defeasance is made upon this Stat. upon this agreement between the Cognusor and the Cognussee, the Purchasor relieved against the new agreement.

Purchasor relieved upon a covenous Judgement or Defeasance.

Hurleston contra Dr. Hone, a Statute without a Defeasance, as against the Purchasor, is presumed either to be upon trust or fraud, and where a Defeasance is made after such purchase, the Purchasor relieved, *Hill. 9. Jac.*

Trust.

Trustees, where the Law looks only to the outward assurance, and not upon the inward, and secret trust, this Court gives relief therein, and causes the trust to be performed.

But a purchase *bona fide*, upon valuable consideration, and not knowing of such secret trust, is not bound more in equity than in Law, but the party deceived in his trust, must there resort to him that deceived him for his recompence.

Purchasers bona fide.

But a Purchasor, although upon valuable consideration, yet having notice of the trust,

is

is to be bound thereby, and also if he dies, by the Lord Ellesmore, *heres tenner ex juncti*, Peacock contra Knivett.

Lands known in quantity, but not in particularity, decreed and set out.

To discover the goods of a man attainted.

Evidences.

A man hath Lands and knows the quantity thereof, but not particularly where it lieth, by reason it hath been obscured by Tenants and occupiers thereof, this Court will Decree him his Land; and in the Case of the Dean of *Lassdaff contra Jours*, a Commission was awarded to lay out so much where most convenient, *M. 10. Jac. Aacklevin Dnus contra Matbold. 39. H. 6. 29, per Cur.* the King granted the goods of a man attainted, the Grantee may compel those to whose possession they are come, to set forth what and where they are.

It is usual in Chancery to demand Evidences concerning the Plaintiffs Land to which he makes Title, for that he knoweth not wherein they are concerned nor the Dates.

If the Defendant in his Answer makes Title to the Land, and justifies the detaining of the Evidences for maintenance of such his Title, it was ordered 23. *El.* that the Plaintiff should bring his Action at the Common Law for the Land to which the Defendant should presently plead in chief, and that he for whom the trial should pass, should have his Possession staid here, and have the Evidence & *Lambert.*

White and Scrape M. 9. Jac. set out by Commissions twenty acres of Furrs which had been obscured.

In a Feofment of Lands for money, the word (Heir) is omitted in the Deed and holpen here, *Lambert.*

Heirs omitted in Purchse and relieved.

If the Mortgagee pay the money due upon the Mortgage, according to the conditions, and the Mortgagee will not deliver up his Deed to be cancelled, his remedy is here.

A man selleth Lands in two Countries, and maketh Livery but in 1 holpen here for another Livery, *Doctor and Student. 57.* for the contract faileth only in Circumstance and Ceremony.

A Lease is made of a Messuage with the appurtenances, by Law no Land passeth, yet for that the same Rent was reserved in a former Lease, made in the same words, and Lands had been occupied with the House, so that *Sr. Thomas Bromley* by advice with the Judges, ordered the Land to be enjoyed, *Lambert.* But not so against Purchasers of a reversion to make a Lease void in Law good against them.

A man bound as a Surety, for fear of arrest, paid the Defendants debt at the day, so that if he should sue his Counter-bond at Law, *Non damnificatus* is good plea against him, holpen here to have his money repaid him, *M. 31. & 32. El.*

Where Deeds do concern one in Rem. or reversion as well as the Tenant for life, who hath gotten possession of them, ordered here to bring them in indifferently, *Hill. 16 El.* and if either party have use of them, to have them out upon Bond to bring them in again.

A Suit ordered and decreed in the Court of Requests, and staid there for Execution, by a prohibition out of the Kings Bench, the Decree of the Court of Requests was ratified and confirmed by a Decree and Authority of this Court,

Mortgagee denies to deliver the Deed upon payment of the money.

Sale of Land in two Countries and Livery in one.

A Messuage with the appurtenances.

Surety relieved upon payment of the Bond at the day.

Broughtons Case Coke. 5. 24. cont. Deeds to be brought into the Chancery.

Decrees in other Courts confirmed in Chancery, notwithstanding Prohibition.

Court, H. 13. *Jac.* inter *Rames & Falme* so between *& Tayler*, and between *Eaderby & Hurleston. 9. Jac.* So of Decree Provincial lately in *Fluds Case*; a Bill presented here for corroboration of a Decree in the late *Qu. Annes Court*.

Legacies sued for in Chancery.

In former times Suits were very common here for personal Legacies, yet the Lord Chancellor *Egerton* would say, the Ecclesiastical Courts were more proper for Legacies, and sometimes would send them thither: But if the Defendant did answer, and take no exception, he would proceed to hearing here, *Nurse contra. Borne. Mich. 9. Jac.*

Inequality of persons cause to sue here.

Inequality of persons is cause to hold Suit here, although otherwise the matter be determinable properly at the Common Law, *Green. cont. Cope. Hill. 9. Jac.*

Exception to the Bill after publication, not allowed.

Hawkins Mil. con. Popham Mil. Mich. 9. Jac. the Defendant answers and demurres not, but after examination of Witnesses and publication of the cause coming to hearing, then takes exceptions that the Cause was properly at the Common Law; But the Lord Chancellor *Egerton* said he would hear the Cause, the charges of the Suit being past; for the Defendant might have demurred at first if he had pleased.

Suit

Suits denied help in the Chancery.

Suits grounded upon Wills nuncupative or Leases parol.

Suits upon long Leases of 100 or 1000 years, for such long Leases are commonly made to defraud the King of his Wardships, &c. Or upon some ill or fraudulent ground. Lord Egerton.

Verbal agreements not executed (on either part.

Perpetuities of all kinds by Assurances, Statutes, acknowledged, &c. for they fight against God.

A Plaintiff making his Title by an entail, the Lord Chancellor Egerton dismissed it, saying, of the Statute *de donis conditionalibus*, calling it the ambitious Statute, let it help him at the Law as it may.

Remainders put in the Crown to defeat Purchasers.

Brocages for Marriages and Suits to have money, gifts, &c. *Johnson cont. wells, Hill. 9. Jac.*

Casual morts upon the return from Constantinople, &c.

Wagers and Play money.

Play-houses and all houses of iniquity, the Court being a Court of equity.

Usurers and all Simoniackal bargains.

Several deeds of gifts to deceive Creditors, unless it may be ordered for the benefit of the Creditors. *Wayford cont. Molton, Mich. 42. tors.*

will nuncupative and Lease parol.

Long leases because they suppose fraud not relievable.

Verbal agreements.

Perpetuities.

The Stat. de donis, &c. not favoured in the Chancery.

Remainders in the Crown.

Brocages for Marriages, Suits, &c.

Casual morts, Wagers.

Play-houses.

usury, Simony;

Deeds of gift to defraud Creditors.

The Practice of the High Court

Eliz. Wayland. cont. Allington. H. 8. Jac.

**Concealed
Titles.**

Estates derived under concealed Titles, the Lord Egerton saying, that as the Titles began by the rigour of the Law, let them so maintain them by the Law as they come, *Elem. cont. Sherley. M. 10. Jac.*

Country awards.

Country awards by the voluntary submission of the parties without any order or reference of Court,

**Of what value
the causes ought
to be that are
triable in this
Court.**

All causes under the value of 40 sh. in Freehold, or 40 l. in personalty, unless it be for Rent service, which being never so small, as a Sparrow, Hawk, &c. hath been holden here, because the Land holden being of value may escheat.

Note.

Anno Dom. 1644. over-ruled upon demurrer to a Bill of 8 l. because the Court of Requests not sitting, there is no other relief, the Defendant ordered to answer.

**A man steals
his wife, and
then sues for
portion, no re-
medy.**

A man steals his Wife against her Friends assent, and sues for a Portion here; Lord Egerton, He that steals flesh, let him provide Bread how he can; *Signal. cont. Loughton. M. 9. Jac.*

**Husband and
wife severed.**

Stawby cont. Cross, Lord Egerton said, he would give the Example in Chancery of an Order of a Wife severed from her Husband, saying, let the Bishop call them together, and allow her Alimony.

The manner of Proceedings for Priviledged Persons.

These are to be proceeded in here according to the strict rules of the Common Law Priviledged persons. and are all for or against the Officers, or Ministers of the Court here priviledged for any thing, except free-hold or felony, or against, between strangers upon record here remaining.

If the Suit be here for a priviledged man, the process in an attachment of priviledge directed to the Sheriff to attach the Defendant, to have him in body at the return thereof, and the Defendant then appearing, before the priviledged man declares against him, the Defendant is to put in Bayl to the Plaintiffs Suit, which by the course of the Court are to be four such sufficient persons as the Plaintiff himself shall allow of, which Bayl is not as at the Common Law, that the Defendant shall render himself, but absolutely to satisfy the condemnation: *Archibald contra Barrel, Mich. 23 & 24 Eliz.* And after Bayl so put in by the Defendant, he is not to depart until he have pleaded to Issue, and be licensed by the Court thereunto; *Polt contra Gradwick*; Forasmuch as the Defendant appearing upon an Attachment of priviledge at the Plaintiffs Suit, hath put in Bayl, and joyned in issue to the Action brought against him, therefore he is licensed to depart, *Pasch. 27. Eliz.*

A suit by a priviledged person against a stranger how to be proceeded in.

Bayl such as the Plaintiff likes of.

Priviledged
persons to take
notice of the
Plaintiffs Bill
against them,
without process;
It being filed,
issues in Latine
pleas in Chan-
cery to be trans-
mitted for trial
to the Kings
Bench.
Record never
remained by
B. K.

Demurrer to a
Latine plea.

Rules in Latine
pleas as at com-
mon law.

Forreign plea
not allowed.

No priviledge
but to immedi-
ate Officers of
the Court, and
their menial
servants.

If the Suit be against a priviledged man, the Plaintiff then only files the Bill or Declaration in Latine against him, whereof the priviledged man, so Defendant is to take notice at his peril without any process, and plead by the end of the Term, or else Judgement to be entered against him.

If the parties here in any Latine Plea descend to issue, the proceedings are here no further than after the issue joyned, but the Record is then transmitted for the issue to be tried in the Kings Bench, for no trials by Jury are in Chancery, but the Record being so transmitted is never remanded, but the Verdict, Judgement, and Execution thereupon entered, and Execution awarded there and not in Chancery, and are proceeded in, and remain there in Record.

But if the parties come in and demurre here that demurrer is argued, and Judgement thereupon entered, and Execution awarded here in Chancery, as Law shall be in the Kings Bench.

Upon motions made in Latine, Pleas, Rules, and Orders are given in Chancery as Common law as the case requires.

Inter Ylverton & Burton, the Defendant putting in a forreign Plea, was ordered by the lord Chancellour Egerton either to be sworn to his Plea, or to put in his Plea as he would stand to it, not foreign.

22. Decemb. 1629. at a general Seal, the lord Keeper Coventry commanded the Registrar to enter an Order that no man should be priviledged but the Officers and Clerks of the Court.

Court, or Affidavit made that the party is one of the menial servants of an Officer.

A Compendium of all the Officers in the Chancery, and what they do in their several Offices.

AS God doth dispose his Government by Justice and Mercy, where Mercy hath the supreme place in the Lords Tabernacle, as that which was put above the Ark, in which were two Tables of Stone, in which the Law was written, Exod. 25. To the which Saint James alluding saith, that Mercy triumpheth over Judgment, Jam. 26. Even so the Princes of this Land to the imitation of that heavenly representation have appointed 2 supreme seats of Government within this Land; the one of Justice, wherein nothing but the strict letter of the Law is observed; and the other of Mercy, which in the rigour of the Law is tempered with the sweetness of Equity, the which is nothing but Mercy qualifying the rigour of Justice: *Nam ipsæ etiam leges cupiunt ut jure regantur, id est, ut levi & facili ac benigna interpretatione temperentur.*

The two supreme Laws of the Realm.

The Chancery, and the Antiquity thereof.

The Original of the Chancery.

*Cancellarius
& Cancellaria
from whence
derived.*

THEY of the profession of the Civil Law doe labour to prove that this Court of Chancery within the Realm had his original from them, and their Argument is thus, viz. It must needs be that the Chancery is the ancientest Court in this Realm, because from thence all original Writs and Commissions do come, whereupon all other Courts do ground their proceedings; That Court therefore in time and nature is the first, and could not take light from the other Courts of the Common Law, but from some other Courts that were before them; The very words of *Cancellarius* and *Cancellaria* are Latine words, and are found to be first used by the Civil Law, and did signifie such an Assistant to the Sovereign Prince, as for his wisdom and skill in Law was adjoynd to him, and was so called because he did sit, *inter eosdem Cancellos cum Principe*, and in his absence determined for him, and in his stead. But yet we read not this word *Cancellarius* in the ancient times of the Civil Law, that was practised whilst the Commonwealth stood uninvaded by perpetual Dictators and Emperours, until about 300 or 400 years after, about which time and after this Realm being wholly under the Romans dominion, as also was the chief of the then known World; no doubt their language,

guage, but especially their Laws were here received : And we read that *Trebatius* (an ancient civil Lawyer, and who is often spoken of in the Pandects, who lived in *Julius Cæsars* time) was then 40 years before Christ did remain at *Samarabrina* in this Island of great Britain, and died here likewise. Afterwards the very Oracle of that Law *Emilius Paulus Pampinianus* did profess the Law, and kept this Tribunal seat of Prætor at the City of York, Vide Dr. *Cousens*, 3. 53. & *Cicero's* familiar Epistls.

Note that this Court was not originally for matter of Equity, but the onely use then was to Seal the Kings Patents and Commissions, and to enrol them ; and from thence in the Kings Name (from whom as from a Fountain of Justice it is derived) to send Writs remedial to the Kings Subjects, but after to meet with *summum jus* it was thought necessary to joyn to this Court matters of Equity by Mr. *Cambden* 181. And so also it may appear by an ancient Treatise of the Laws and Usages of this Kingdom, whereby the Realm governed above a 1000 years past, and the words are these, viz. That every one upon complaint out of the Kings Chancery, a Writ remedial without any difficulty ; and in the time of King *Alfr.* there were no Writs of Grace, but all Writs were remedial, and grantable, as of duty by return of an Oath, &c. Vide the Lord *Cooks* Preface to the Reader before his 9. Report.

Sir *John Fortescue* Knight, Chief Justice of England, in the Reign of Hen. 6. writing to Prince *Edward*, saith, that in all times of

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the Kings of several Nations, viz. the Romans, Saxons, Danes and Normans reigning here, this Realm was ruled with the self same Customes that it is now governed withal, neither are the Romans civil Laws by so long continuance of ancient times confirmed, nor yet the laws of the Venetians (which above all others are reported to be of the most antiquity) forasmuch as their Island in the beginning of the Britains was not then inhabited, as Rome was then also unbuilded, neither are the laws of any Pagan Nation in the World of so ancient continuance. cap. 17. And to this effect Sir Edward Cook writeth notably in his Prefaces to his 3. 6. 8. and 9. Books of the laws and Usages of this Kingdom, whereby this Realm was governed above 1100 years past beginning with the diversities of Courts of Justice, which are *Officina legis*, and particularly the Chancery; Thus it was ordained that every one upon complaint should have out of the Chancery a Writ remedial without any difficulty. In the time of King Alfred there was no Writs of grace, but all Writs were remedial as of duty by reason of an Oath; The Writs of grace are *Subpena*, *Cerciorari*, &c.

Writs of grace.

Note, Pomponius lib. 2. cap. de origine juris affirmeth that in Tarquinius Superbus his time, there was no Civil law written, and that Papirus reduced certain observations into writing, which he called *Jus Civile Papirianum*, 9. co. 7. par. f. 10. E.

The antiquity of
the common
Law.

saith, that the common law hath alwayes since the Creation of the World been in use.

Brevia mandatoria & *remedialia* are all Writs
real

real and personal, by which the party wronged
to recover somewhat and to have remedy by.
Brevia mandatoria & non remedialia, are not tied
to any place, but do follow subjection and
allegiance in what Country or Nation soever
the subject be, as the Kings Writ to command
any of his subjects residing in any forreign
Country to return into any of the Kings Do-
minions, *sub fide & ligeantia quibus nobis*, &c.
c. 1. 7. 20. Dyer 17. 64.

*Brevia man-
datoria reme-
dialia & non
remedialia.*

All Judges of England, 9. Ed. 4. 53. did
manifestly affirm that the Chancery, Kings
Bench, Common Pleas, and Exchequer be all
the Kings Courts, and have been time out of
mind, and so that no man knoweth which of
them is most ancient, 19. Ed. 4. 4. and Cooks
Preface to the 8. Report.

*The antiquity of
the highest
Courts at West-
minster.*

Doctor and Student lib. 2. 126. where it is
agreed that of the first institution of the said
Courts, and that such Courts there should be,
there is in no statute nor law written in the
laws of England, but the ground and begin-
ning of the said Courts depend upon the Cu-
stomes of the Realm, the which custome is of
so high authority that the said Courts nor their
authority may be altered, nor their Names
changed without Parliament. And Cook in his
Preface to his third Report proveth out of 16.
lib. Ass. Plaintiff 24. that the Court of Chan-
cery is *Officina Justitiæ & equitatis*, where all
original Writs in ancient times were the grounds
of all Suits, were devised and framed.

*The Chancellors
authority not by
Patent, but by
delivery of the
great Seal, and
it is recorded*

The Chancellour hath no commission by
letters Patents, as all other Judges and She-
ffs have, but he receiveth authority by deli-
vered.

very

very unto him the great Seal of England. *De Confess Apology 2. part. cap. 2.* And when the King hath made his Chancellour, there is an entry made in a close Roll in the Chancery, declaring on what day, and in whose presence the great Seal was delivered; and any other Grant or Patent for that Office, there ought not to be for that the person to whom the Office is committed hath the keeping of the great Seal in his own hand. *Vide Cambden 180.* And the Chancellour, is but at will, *Durante beneficio placito Regis, Co. L. 9. 99.*

Custos magni sigilli.

The *Custos magni sigilli*, is called the Chancellour of England by the Act, 7. H. 6. cap. 14. And if a man slay the Chancellour being in his place doing his Office, it is high Treason by the Statute of 25. E. 3. cap. 2. and by 5. E. 3. cap. 15. It is declared that the Lord Chancellour and Lord Keeper have one power.

The place of the Lord Chancellour in Parliament.

And by the Statute of 31 H. 8. cap. 10. it was enacted that the Lord Chancellour being of the degree of a Baron of Parliament, shall sit above and be placed on the East side of the said Parliament Chamber, on the higher part of the Form of that side above the Dukes, except such as shall happen to be the Kings Son, the Kings Brother or Uncle, the Kings Nephew, or his Brothers or Sisters Sons. And if any person which shall hereafter happen to have the said Office of the Lord Chancellour to be under the degree of a Baron, by reason whereof they can have no interest to give any voice of assent or dissent in the house, that then in every such case he shall sit and be placed at the uppermost of the seats in the midst of the Parliament Chamber.

To the Chancellour appertaineth the constituting of the Kings and Queens Commissioners throughout all England.

Lamb. Justice lib. 1. cap. 3. and by the Act of E. 6. cap. 11. the Lord Chancellour was wholly restored to his antient Authority in naming the *Custos Rotulor*.

As often as any place of Judicature is void the King useth to chuse one of his Serjeants at Law, and him by his Letters Patents to ordain a Justice in that place, and then the Lord Chancellour shall enter into the Court where the Judge is so wanting, bringing with him those Letters Patents, and setting in the midst of the Judges, causeth the Serjeant so elected to be brought to the Bar of the Court, to whom in open Court he notifieth the Kings pleasure of electing of him to the place that is void, and causeth the aforesaid Letters to be openly read and published, the which done, the Clerk of the Rolls (but now of later practice the Clerk of the Crown) shall read before the same elect person the Oath that he shall take, which when he hath sworn upon the Gospel, the Lord Chancellour shall deliver unto him, the Kings Letters Patents aforesaid; *Fortescue cap. 51 Cambd. 180.* who of the credit of his great Court, and the Authority of this great Officer, cites the Testimony of a good Author who lived in the time of H.2. *in hæc verba,* viz. The dignity of the Chancellour of England is, That he is reputed the second person of the Realm, and next unto the King: with the one side of the Kings Seal (whereof he hath the keeping) he may sign his own Injunctions,

The Judges at Westminster sworn before the L. Chancellour.

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tions and dispose and order the Kings Chap-
pel as he liketh, to receive and keep all Arch-
bishopricks, Bishopricks, Abbies, and Baro-
nies void and falling into the Kings hands, to
be present at all the Kings Councils, and thi-
ther to repair uncalled; Also that all things
be signed by the hand of the Clerk who carry-
eth the Kings Seal, and that all things be di-
rected and disposed by the advice of the Lord
Chancellor.

*Chantery a San-
ctuary for stran-
gers.*

The Chancery is a Sanctuary and place
refuge for all Strangers. 31. H. 6. 4. 13. E. 4.
9. b.

The Chancellor, and his Place, and Power.

*How many
Chaplain the
Chancellor may
have.*

THE Chancellor of England by the Statute
of 21 H. 8. cap. 13. may have their Chap-
lains, whereof every one may purchase Li-
cence and dispensation to receive and keep
two Benefices with cure of Souls; and to the
Chancellours Office in process of time much
Authority and dignity hath been allowed and
adjoynd by Act of Parliament, whereof you
may read in the Abridgment of Statutes in
the Table and stile of Chancery, and there-
upon by the Books of the Common Law it is
acknowledged that the Chancellor hath two
Powers, viz. Ordinary and Absolute, *Statute
Præog. cap. 20. 64.* But more thereof more
distinctly hereafter, and now concerning his
Associates and Assistants in Chancery.

Officers

Officers in Chancery.

THe Master of the Rolls is one of the twelve Masters of the Chancery, his Title in the Patent is *Cliticus Parve Bagae, Custos Rotulor. & Custos domus converforum*, the which house is so called, because the Jews in ancient time, as they were any of them brought to Christianity, were bestowed in that house separately from the rest of that Nation in London, and the house with the appurtenances was destined by K. E. 3. to the keeping of the Rolls Records of the Chancery, and therefore to this day it is called the Rolls, *Cambden* 428.

He is called Clerk of the Rolls 22 R. 2. c. 2. and in *Fortifcne* cap. 24. and by no Statute else Master of the Rolls, until 11 H. 6. cap. 18. & yet in cap. 15. the same year is called Clerk, and as a Clerk he taketh Oath in open Court, the form whereof was by Parliament, 18. E. 3.

In that Land Houses or any other yearly real profits may be incident or appendant unto an Office, as of the Warden of the Fleet, H. 7. 39. But when the Officers are of inheritance, for otherwise would ensue a great inconvenience, viz. the freehold would be in suspense after the death of the Officer, until a new Officer be made; if the Office do not descend unto an Heir, or some man who hath the succession, by Commissions or Letters Patents from the King. *Dy. y 41. Quere.*

Master of the
Rolls.

How anciently
called.

Lands may be-
long to an Office
of Inheritance.

The

The Oath of the Master of the Rolls;

Master of the
Rolls his
Oath.

YOU shall swear, That well and faithfully you shall serve our Sovereign Lord the King, and his People in the Office of a Clerk in Chancery to which you be entituled, and you shall not assent to, or procure the Kings Disherison, nor Damage, to your power nor you shall do nor procure to be done, any fraud to any mans wrong, nor anything touching the keeping of the great Seal; and you shall lawfully Counsel in things that touch the King when you shall thereunto be required: And the Counsel you shall know touching him you shall conceal: And if you know the Kings disherison perpetual damage or fraud to be done upon things which touch the Seal, you shall put your lawful power to redress and amend the same, and if you cannot do the same, you shall certifie the Chancellor or others which may do the same to be amended to your intent. And for the Clerks of course shall be added, And

and you shall not bring nor to your knowledge suffer to be brought any Writs, which you make out of the Court not Sealed, thereof to do Execution, nor shall Record by Attorney by Writs, or without Writs, without special License, if you have not lawfully examined the parties: And whether Attorney in propria persona: Neither shall you deliver any Writ which shall be of Commandment to the Examiners nor to the Seal, before that the same Writ be sent to you by the Commander, which thereof hath power, unless it be to the Chancellor, or to one of the Masters which command you to make the Writs. And all the Writs which you shall make you shall deliver them to the Examiners by your own hand and by one Companion which is sworn to the King (if your self be out of Court, because of sickness or other necessary cause, so that you cannot be the same;) And that no Writ written of another mans hand be delivered to the Examiners under your name as yours; nor no man shall put your Name to your Writs but your self: As God you help.

The

THE Master of the Rolls hath been of long time numbred and reckoned amongst the greatest Officers and Magistrates of the Realm, as by the penning of the Statute 1. cap. 1. appears; viz. It was enacted that the Chancellour, Treasurer and Keeper of the Privy Seal, the Steward of the Kings house, the lord Chamberlane, Clerk of the Rolls, Justices of both Benches, &c. should be called in the naming of Justices of the Peace, Sheriffs, Escheators, &c. and that they should be sworn to do the same faithfully, and without affection.

The Judgements given in the case aforesaid are in this form, viz. *Per quod de advisamentis Justiciar' &c. considerat' fuit tunc & ibidem co. lib. 8. 23.* But the Judgements of the common Law are general, viz. *Ita considerat' per curiam*, for if the Judgement be entred *Per capital' Just. cum assensu*, of the rest, it is not good co. l. 5. 3.

Master of the
Rolls not Judge
as Master, &c.
but by special
commission.

He is.

They have.

But I do not conceive that the Master of the Rolls hath a lawful calling to be a Judge in the Chancery in the absence of the Lord Chancellour, who is the only Judge of the Court, or by what authority the Master of the Rolls doth set and determine causes in the Chappel of the Rolls, as of late years hath been used, unless he be authorized thereunto by special commission under the great Seal; but much less may any of the Masters pretend any authority as Judges in that high Court without an

like Special Commissions, but the first president was Cardinal *woolsey*, Chancellour, *co. pref. ad 3. 84.*

Yet nevertheless the Master of the Rolls by the judgement of Mr. *Marrow* is a general conservator of the peace by his Office, but he maketh process, and taketh Recognizances thereupon, not as incident to his Office, but by prescription, *Lamberts Just P. lib. 1 fol. 12.*

The Lord Chancellour sometimes in great and weighty causes hath used to call some of the Judges to assist him, or rather to associate with him; for they which are so called are not Judges with him, so did the Lord Chancellour *Egerton* Baron of *Ellesmore* in the great cause of the Princes Dukedom of *Cornwal*, call into Chancery the two chief Justices, and other Justices, and they severally did declare their opinions in open Court, and his Lordship openly published that he did associate them to him, telling them the examples of the Lord Rich, Chancellour and others, and said, that he held it a point of good discretion to follow the examples of wise men, but *Periculosum existimo quod bonorum virorum non comprobatur exemplo*, *Coole Preface ad lib. 2. 14 E. 4. 41. 37 H. 6. 23.*

Master of the Rolls a Conservator of the peace.

Association of Judges to the Chancellour.

It appears by a proviso in a Statute made 14 H. 8. c. 18. That the Master of the Rolls hath the giving of the Offices of the six Clerks in the Chancery: But the Statute made 5, and 6 E. 6. cap. 16. entitled an Act against buying and selling of Offices, there is no saving proviso, or exemption for the Master of the Rolls for disposing or selling of the Offices of the six Clerks, *caveat ergo emptor, v. co. lib. 3. in fine;*

Offices that are to be disposed by the Master of the Rolls.

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Quere, If the Statute doth not extend to Courts of Equity, as it doth to Courts of Justice at common Law, for it hath been adjudged that the Register and all other Officers and officers in Ecclesiastical Courts come within the danger and provision of the Statute, 2. Cro. p. 269.

Masters of the Chancery.

Masters of the
Chancery.
The several
kinds of writs
in the Chancery.

B Racton lib. Tract. de Except. cap. 17. fol. 4. doth divide Writs into three parts, and thereof were three divers sorts of Clerks, *Sunt quedam Brevia formata*, viz. *Originalia vel de cursu*, *quedam Judicialia ex eis consequentia*, &c. *Quaedam Magistralia quæ nec sunt de cursu, nec forma*, &c. *Item alio lib. 2. cap. 12. Est inter cætera quoddam officium quod dicitur Cancellaria, quod vero provido & discreto*, &c. *Magne dignitatis debet committi*, &c. *Qui associantur clerici jurati qui in legibus & consuetudinibus Anglicanis notitiam habeant pleniorẽ*. And the Writs that they made were called *Brevia Magistralia*, because these Clerks who made them, for their Science were well called *Magistri Cancellaria*, and those who writ *Brevia de cursu* were, and yet are called *Cursitores*; And even as the Writs which the *Cursitores* do write, he called *Brevia de cursu*, even so the Writs which the Master doth draw in difficult cases are called *Brevia Magistralia*, co. lib. 8, 9. And these Clerks were grave and ancient, skillful and well experienced in the course of Chancery, and called *clerici de prima forma*, and of late

late times *Magistri Cancellari* by Egerton Lord Chancellor in his Book of the post nati, and Polydore de Virgil in his writing of William the Conqueror in lib. 9. saith, that there was instituted a Colledge or Fellowship of Scribes in this Court, &c. And so much may be true and probable, that in former times this Court was not furnished with Clerks in so good order as afterwards.

Omnia fert tempus, pariter rapit omnia tempus.

And within our memory the Cursitors office hath been disposed otherwise than in ancient time it was, and there hath been some other innovations besides.

The ancient name of *Clerici de prima forma* is almost forgotten, and few of them have had that learning in the Laws of England which was required to be in those men, and no marvel, for that in many years past they have been men of another profession, and therefore there hath been also disuse of those *Brevia formata*; Yet, shortly after E. 1. in whose time the Statute of Westminster, 2. cap. 24. was made, which Wills, 107. *Quotiescumque de ceteris eorum in Cancellaria quod in una casa reperitur Breve, & in consimili casa cadente sub eodem jure, & simili indigente remedio non reperitur, concordent Clerici de Cancellaria de Breui faciant, &c.*

Clerici de prima forma,

Note this was one amongst many other inconveniencies induced into this Court, and to the Commonwealth, after Bishops were advanced to the high Office of the Lord Chancellor, which place they began to possess in H. 2.

When Bishops were first Lord Chancellors,

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time, Cambd. 180. Mr. Fox his Book of Martyrs, 115.

Vid. 2. inst. p.
405, 406, 407,
408.

Note quod Clerici de prima forma, in this case are Coadjutors with the Lord Chancellour, for if they agree, then it is an end, and stands for Law, and then no resentment to the Parliament, but if they do not agree, the cause must be referred to the Parliament, as appears by Rot. 2. c. 24. by force of which Act the Writ called *Breve de ingressu in consil. casu* was formed by the Clerks of the Chancery, F.N.B. 206. f. And this defect and failing of Clerks in the knowledge of the common Laws, and in framing *Brevia formata* enforced Judges in other Courts in many things to give allowance to the ancient form of Writs, and to enforce the party Plaintiff to make a special Court, when the Writ doth warrant the count in substance, although there be variance in the circumstance, Co. l. b. 8. 48, 49. As for example the Writ of Assize of Durr. presentment was formed in these words, *Quis advocatus tempore patris presentavit ultimam personam que mortua est*, yet nevertheless the Plaintiff was allowed to have that Writ in case the person did resign and is alive, and as the form of the Writ is, he supposeth that the Defendant did deforce him of the Advowson; and yet by his court he shall declare that he or his Ancestors did last present to the same Advowson, whereby he supposeth that he is in possession of the said Advowson, and it was allowable, F.N.B. 31. b. Even so if the Tenant hold by Homage Ancestral and is impleaded, he may have a Writ de *Warrantia carte* against his

Lord,

Lord, and the form of the Writ is, *unde cartam habet*, though he have no Deed nor Charter to shew, but only his tenure by homage *Ancestr. F. N. B. 124.* And so if the Tenements be let to a man for half a year or less, and the Tenant make waft, the Writ shall be *quod tenet ad terminum annor.* but yet he must make a special Declaration upon the truth of the matter, and the Court shall not abate his Writ, by Mr. Lit. 4.4. and many examples more there are.

A latter name of Masters of the Chancery retained with them, in which regard, soasmuch as they are in these dayes also grave and wise men, though many of them are of another profession, they retain their ancient precedence before all other Clerks, and do sit upon the Bench with the Chancellours, as when they were *Cojudices* with him in matters concerning forms, and in *diebus illis* they were allowed Robes out of the Kings Wardrob, and there is no Recognizance acknowledged before any of them, and certified under their hand writing, but is of that credit that it is a matter of Record, and as effectual as if the same had been acknowledged in open Court; And every Defendant to a Bill exhibited into this Court must make his answer upon Oath taken before one of them; and also all Deeds and other Writings which are to be inrolled in the Chancery, are to be acknowledged before them; and the Lord Chancellour taking advantage of their leisure and opportunity doth many times of late refer matters which have depended in that Court and are ready for hear-

The precedence of the Masters of Chancery.

Their Office.

The Practice of the High Court

ing unto their examination; the which according to their examination and Certificate are decreed: But it is an old saying, That new meats and old Laws are best for use, the Apocryphe of *Periander* of *Corinth*. cited in *Sir Edw. Cooks* Preface to his fourth Book. And I know not how, but the People do complain much of this new employment of them, and therefore read the Stat. of 1, Jac. 6. 10. And it is one (amongst others) of the greatest Honour of the common laws, that causes are never adjudged or resolved *in tenebris, or sub silentio suppressis rationibus*, but in open Court, and thereupon solemn and deliberate Arguments: First at law, by Counsel learned of either part (and if the Case depend in the Court of Common Pleas, then by the Serjeant at Law) and after at the Bench by the Judges where they argue, the puisne Judge beginning, and so ascending *seriatim* upon certain dayes openly and purposely prefixed, declaring at large the Authorities, Reasons and Causes of their judgements and resolutions in every such particular Cause; *Habet enim nescio quid energiae viva vox*, A reverend and honourable proceeding in a Law, a grateful satisfaction to the parties, and a great instruction and direction to the attentive and audious hearers, vol. 1. p. 9. Ad. *Lectur. in fine* Mr. Poulin.

Civilians claim
to be Masters of
the Chancery.

The Civilians say that it only appertaineth to them to be Masters of the Chancery, and assistants to the lord Chancellour, and I have heard some of them complain as of a wrong done to them, because they are not permitted to give their judgement there as the other Judges in temporal Courts do.

To

To each Court (that is to say) to Courts of ordinary Justice, and to this Court of Equity, the Kings of this Realm have sorted men fit for skill and education to manage the same, that is, the professors of this Law of this Land, who may be brought best to know the justice of this Land, even so to the Court of Chancery, they have assigned the Professors of the Civil Law, for that a great sort of the Titles of that law, are Titles of Equity, as whatsoever is *Jus prætorium* or *Jus ædictum*, with them is matter of Equity, so that they may seem best able for their skill in those Titles of which no other Law hath the like to assist the Lord Chancellor in matters of conscience, who, though he be for the most part a man chosen by the King himself out of the rest of the Judges and Sages of this Land, for his special good parts of learning and integrity above the rest, as now the person honourable is that occupieth that place; who is, as Tully saith of that eloquent Orator Marcus Cæsar, *Non minus ex multis, sed unus inter omnes prope singularis*: So that they must be thought, for their great and eminent wisdom in all things appertaining to their place, able to direct themselves: Yet because it is *Divinitatis potius quam humanitatis omnium rerum habere memoriam, in nullo errare*, as one well saith; it was providently done of Princes of former ages, to joyn to these great Personages, men furnished with knowledge in those cases of conscience, Dr. Ridley lib. 2. 228. Bracton, §. Having thus far spoken of the twelve Masters of this Court, and of these Clerks, who are as Attornies there: It now

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lower to speak of the other Clerks the realso
viz.

Clerk of the Crown.

*Clerk of the
Crown.*

THE Clerk of the Crown in the Chancery is an Officer, who by himself or his Deputy is continually to attend the Lord Chancellor or Lord Keeper, for special matters of State by Commissions or the like, either immediately from his Majesty, or by order of his privy Council, as well ordinary as extraordinary viz. Commissions of Lieutenants, of Justices Errants and of Assizes, of Oyer and Terminer, Goal delivery, of the Peace, &c. with the Writs of Association and *Deo. potest.* for taking of Oaths, also all general pardons upon grants of them at the Kings Coronation, or at Parliament, The Writs of Parliament with the names of Knights and Burgeses be to be returned into his Office; He hath the making also of all special pardons, and of Writs of Execution upon Bonds of the nature of a Stat. Staple, forfeited upon the Act of 23 H. 8. c. 6. And this was annexed to his Office in the Reign of *Q. Mary*, in consideration of his continual and chargeable attendance, both which said Writs before were common for every Curfitor and every Clerk of this Court to make.

Clerk

Clerks of the Petitbag.

His Clerk is also an Officer in the Chancery, in which sort there be three, and the Master of the Rolls is the chief. Their Office is to record all Returns of all Inquisitions out of every Shire; all Liveries and Ousterlemains granted in the Court of Wards, to make all patents of customs, Gaugers, Comptrollers, and Almagers, all *Conge des liers* of Bishops, all Liberties upon extents of Stat. Staple, the recovery of Recognis. forfeited, and all *Allegit* upon them, the summons of the Nobility, Clergy and Burgeses to the Parliament; commissions directed to Knights and others of every Shire, for the selling of Subsidies, Writs for the nomination of Collectors for fifteenths, and all traverses upon any Office Bill or otherwise, to receive the money due to the King for the same; consider herein the Stat. of 1. H. 3. c. 23. H. 8. c. 22.

Clerks of the Petitbag, their Office.

Clerk of the Hamper.

HE is also an Officer in this Court, and is also called Warder of the Hamper, whose place is to receive all the money due to the King's Majesty for the Seals of Charters, Patents, Commissions and Writs, and also Fees due to the Officers for inrolling and examining,

Clerk of the Hamper.

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ing the same, with such like. He is tied to
 lord Chancellours or lord Keeper in his
 ly attendance in the term time, and at all times
 of sealing, he having with him leather bags
 wherein are to be put all Charters, &c. as
 they be sealed, and those bags being sealed
 by the L. Chancellours privy Seal, are to be
 delivered to the Controulor of the Hamper, &
 upon his receipt of them, doth as unto the
 office appertaineth.

Fines for Original Writs.

The course is there for every Writ of Debt
 the sum of 40. l. and more to pay the sum of
 sh. 8. d. and for every sum of 100. Marks 6.
 s. d. and 10. sh. for every Writ of Plea of
 called *Præcipe quod reddat* (unless it be a
 of right patent) if the land be of the yearly
 lue of 5 Marks 6. sh. 8. d. and so higher pro
 ra F. N. B. 9. And if the Writ be abated
 shall have a new Writ for the same Fine, if
 first be entered in the Chancery, Brog. Fine
 contempt 30. But the Kings fine for it is 4.
 co. l. 7. f. 12.

*Controulor.**Controulors*

HE is an Officer in this Court, attending
 on the lord Chancellours or lord Keeper
 dayly in the term time and days appointed
 for sealing: His Office is to take all things
 sealed from the Clerk of the Hamper, inclosed
 in bags of leather, as is mentioned in the
 Clerks Office, and to open the bags to note
 the just number, and especially the natures and

to be of all things so received, and to enter the same into a special book, with all the duties appertaining to his Majesty, and other officers for the same, and so chargeth the Clerk of the Hampsen with the same.

Cursitors

Although these Clerks be men of less reputation than those before mentioned Clerks in *primo gradu* & *Magistri Cancellarii*, yet their Office is much more ancient; for to them only pertaineth the making and stamping of Writs Original (so named, because that Writ doth deduce matter into the Suit) wherefore *Quidam* saith, *Quidam Brevia formata, viz. Originalia sunt de Cursu*, and therefore the makers of them are called *Cursitorij*. And just. Fitz. in his Preface to his *N. B.* saith, that Original Writs are the Rules and Principles of the Common law; and for the antiquity of those Original Writs, you may look in the Preface to the third Reports. For these Cursitors are bound by the duty of their Office to have knowledge and skill in the true form of Writs, for that the want of skill, and cunning in this Clerk in legal form and Court of an Original is not a misprision amendable by the Statute of Hen. 6. c. 12. of which matter you may read at large in many book Cases and excellent proceedings in *co. L. 8. 159* and *Finch 153. b.*

Inferiour Clerks

And for the Fees appertaining unto them I have not any certain Instructions therein, and there-

The Practice of the High Court

therefore will omit them; and whatsoever they are I wish they might be increased for the better executing of their Offices, but upon condition only, that the Client might have sufficient remedy and recompence against them, when their Suits and Actions with great expences obtained, be overthrown by the occasion only of the nescience and unskillfulness of these Clerks in the legal form of framing Originals; for when the cause hath long depended in this Court, insomuch that it is ready for sentence, or rather past sentence, and stands at Execution, it cannot be but great injury to the subject after so much labour and money spent in waste to begin his Suit again; the which is like to *Sisyphus* punishment, the which is sensibly true in a poor dejected Client when his case is near ended, it shall be again put upon the Anvil, as though it were still rough work, and new to begin again.

Twelve Curstors and they a Corporation.

The said Curstors are in number twelve, and have allowed to them several Shires, in which they make such Original Writs as are by the subject required; the which said people are a Corporation amongst themselves: In their Writs it is truly verified *quod forma defectu esse*, for their misprisions are not amendable. *Co. l. 8. 159.*

Examiners Office.

Here be two Examiners in this Court, who examine for the parties or Witnesses produced to be examined in any Suit, so that the Witnesses first take their Oaths before a Master of the Chancery.

Examiners

ad to dicit
militant

Serjeant at Arms or Serjeant at
Mace.

Concerning the Serjeants Office of the Mace, he attendeth on the Lord Chancellor or Lord Keeper in this Court; for the means to call all men into this Court, is either by this Office or by Subpœna, and hereof a case is cited, Co. lib. 9. 98. b. Middlesex Constat quod Dominus Philippus & Domina Maria nuper Rex et Regina Angliæ, soror Domine Regine nunc precharissime pro se heredibus & successoribus Regine Mariæ, &c. dederunt & concesserunt Marco Steward. gen. officium servient. eorund. nuper Regis & Regine Mariæ ad arma attend. super Cancellarium Angl. pro tempore existend. &c. Habend. & gaudend. Officium illud pro termino vite sue, with all Fees thereunto belonging or appertaining, and with one certain Fee of 12. d. per diem. And myay chief Justice, and all the Court said that for so much as the Chancellor or Keeper of the great Seal of England is but the

ad to dicit
militant

The Practise of the High Court

the Kings Deputy *Durante bene placito*, therefore the said service done by the said Serjeant in Arms to the Deputy of the King, is in law done to the King himself.

Clerk of the Faculties.

*Clerk of the
Faculties.*

CONCERNING this Clerk it is provided by Stat. 26. H. 8. cap. 21. Intituled the Exoneration of the Kings Subjects from exacting heretofore paid, and Impositions to the See of Rome, &c. viz. That no manner of dispensations, licence, Faculties or other Precepts or Writings hereafter to be granted to any person or persons by virtue or authority of this Act by the said Archbishop, &c. until the same Licence, &c. be first confirmed by your Highness, your Heirs or Successors, under the great Seal, and enrolled in the Chancery, in a Roll by a Clerk to be appointed for the same purpose, &c. And in the end of the same Statute amongst the Fees to be taken and divided it is set down particularly how much shall be taken by the Clerk for the enrolment of such Licence &c.

Clerk of the Presentations.

*Clerk of the
Presentations.*

CONCERNING his Office we read that the Chancellours of England by virtue of his Office shall present to all the Kings Churches

Of Chancery unfolded.

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Benefices which be under the yearly value twenty Marks, and be in the Kings gift in right of the Crown: But if the King have them by another Collateral Title, the Chancellour shall not have them: These presentments must pass under the great Seal of England. *Plow. 528. F. N. B. 37. K. But 21. E. 4.* doth mention that it belongs to the Chancellour to present to all the Kings Churches under the yearly value of forty Marks: And have heard the Chancellours authority in this behalf is enlarged by the Kings several Letters, and letters Patents. It also appertaineth to the Chancellour of England to visit all Hospitals which be of the Kings Foundation, or of any of his Progenitors; and so also the Chappels of the King or of his predecessors Ordinary shall visit them but only the Chancellour. *F. N. B. 42. d.*

Clerk of the Appeals.

His Clerk is by the Stat. of 25. H. 8. c. 9. by which (*inter al.*) it was enacted that lack of Justice at or in any of the Courts of Archbishops of this Realm, or in any of the Kings Dominions, it shall be lawful for parties grieved to appeal to the Kings Court Chancery, and that upon every such appeal, Commission shall be directed under the great Seal to such persons as shall be named by the Kings Highness, his Heirs or Successors, even as in case of an Appeal from the Admirall Court,

The Practice of the High Court
Court, to hear and definitively to determine
such Appeals.

The Clerk for inrolling Letters Patent

*All the Grants
and Patents of
each King must
be recorded.*

*Crompton Juris-
del Courts, title
Exchequer.*

This is of an Office by order of the com-
Law, for though it be not expressed
any Stat. that the Kings Patents shall be in-
led, yet so much is implied for the Kings
ness, as is said before in the Title of the
ser of the Rolls, for his Grants must ap-
by record, which must remain in his custody
viz. in the Court; And in divers Stat.
mention is made that Exemplifications
be made, which cannot be unless the Pat-
were intolled.

*Certain cases wherein Clerks of the Chan-
cery and their Attendants may have
certain priviledges, and where
not.*

*Priviledges of
the Clerks of
Chancery.*

IF the lord Chancellor or any of his
vants, or a Clerk of the Chancery, or
of his servants be arrested upon an Act
of Debt or Treasors, &c. in London or
where, and thereupon be sued in Law
before the Mayor or Sheriff thither, they
have a Supersedeas out of the Chancery di-
ed to the Mayor, &c. to surcease and will
party to sue in Chancery, if he find in

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be expedient for him, and therefore in the Register 91. there are divers Writs, and one of them doth mention that this custome and privilege was confirmed by authority of Parliament, Ann 18 E. 3.

If any Officer or Clerk of this Court be arrested in London, or other place, he shall have a Writ of privilege with a Superseas in it, and shall command the Plaintiff *quod sequatur in Curia ubi, &c. si voluerit, &c.* where he may have remedy in his suit as well as elsewhere, in which case no *procedendo* shall be awarded to an inferiour Court, but otherwise it is where the party arrested had privilege by reason of a Suit depending in the Superiour Court, for that is the only cause of this privilege; *per omnes Justiciarios* Dyer 287. 37 H. 6. 13. One of the Clerks of the Chancery was sued in the Common pleas in an Action of Debt, and the process continued to the Exigent, and the Defendant sued a Superseas to the Sheriff *quia improvide, &c.* And after he sued a Writ of privilege forth of the Chancery to the Justices there, reciting the privilege of the Chancery, and requiring the Justices to surcease, and it was well debated whether he should have the privilege or no, and at last the privilege was disallowed, and the Clerk of the Chancery was forced to answer, for the Court was lawfully seized of the plea by the act of the Defendant himself, for inasmuch as he did sue the Superseas *quia improvide, &c.* he hath affirmed the Jurisdiction of the Court, for every Superseas *quia improvide, &c.* and recite an appearance in Court of the Defendant by Attor-

ney, but shew his name whereby it is his own default; But if he had not sued forth that Writ, although the Exigent had gone forth, yet the priviledge hath been allowed, and thereof are divers Presidents, and then after the priviledge cometh to the Justices, they ought to make to the Sheriff a special Superfedeas as of outlary, reciting the Writs of priviledge, *Dyer 33. b.*

*Superfedeas of
priviledge when
not allowed.*

In Exchequer Chamber, *Illingsworth Ch. Baron* said to the Justices, That *Tho. Young* Justice sued a Bill against the Clerk of the Hammer in the Exchequer upon his account, the Clerk the last Term did imparl there till this Term, and now a Superfedeas was sent unto us reciting that he was a Clerk of the Chancery and ought not elsewhere to be sued, and therefore commanded that he should surcease, &c. And the *Ch. Baron* asked them if this Superfedeas were allowable, forasmuch as he hath affirmed the Jurisdiction, &c. And all the Justices did hold it without question that when he did imparl, and the Court was seized of the Plea, he should never after disaffirm it, for all are the Kings Courts, and have been time out of mind, insomuch as no man can say which is the most ancient; And also they did hold clearly that if he had not imparled, yet the Superfedeas should not be allowed, for every Accountant ought to be attendant and present here, and where he is present there it is convenient he should be sued; Furthermore it is for the Kings advantage that he be sued in the Exchequer, for if he should be driven to answer elsewhere, then he could not attend here

here to pay the King ; Likewise the Accomptant may have here a Bill against his Debtor to hasten the Kings present payment ; and if an Accomptant in the Exchequer should be sued in the Common Pleas, he may send a Superseas to them to surcease, or if he sued in the Kings Bench, those of the Exchequer will shew the Record that he is an Accomptant, for they may not make a Superseas to the King, and the Plea there is holden *coram Rege*, &c. and thereupon he shall be dismissed, for he ought to be sued in the Exchequer. And *Fairfax Ch. Justice* said, that this suit of *Justice Young* is as Assignee of the King by his Patent to receive this money of the Clerk of the Hamper here upon his account : And as no Superseas lieth against the Kings Assignee, &c. And *Justice Young* himself said ; What if the Chincellour will command me upon a pain not to sue him : thereupon *Billing* answered, You are not bound to obey him, for such commandment is against the Law.

If a necessary Officer of the Court, as Register, Master of the Chancery, &c. be in prison, the Chancellour may enlarge him, and thereupon *Billing* answered, but if an Officer be in Execution for Debt, Damages, or the like, he shall have no privilege, for then the party is without remedy, if that he were once at large, &c. 2 Ed. 2. *Crompr. Jurisdic. del Courts* 48. 161.

The profits of the Office of any Officer belonging to this Court shall not be extended upon any *Recog. Star.* &c. for that a man shall never have any thing extended upon execution, ment, &c. and why.

The Practice of the High Court

unless he may grant and assign over the same thing, because he is an Officer unto the Court to do the business and service thereof, and not his own business, and also it is an Office of trust which is not communicable to a stranger, as an Officer to be carver at my Table which cannot be assigned.

The wife of a privileged person not privileged, nor be in her right.

Paul Clark of the Crown-office in the Chancery, and his wife as Executrix of her first husband were sued in the Common pleas for debt, and he brought a Writ of Privilege for him and his wife, & *non allocatur*, because she is not impleadable there, nor her attendance requisite in Chancery; But it is otherwise if the husband were impleaded alone in the Common Pleas, and he coming into the Court with his wife to defend the Suit, and they are both arrested, in that cause they should have privilege, *Dyer 377.*

A servant of a servant shall be privileged.

If the husband have privilege in the Chancery it will not serve for the Wife, and yet a servant of a servant shall have privilege, as a servant mediate to the Chancellor, but the wife is not a proper servant, 35 H.6.4.

It is a common case in our Books, that in an action of Debt brought jointly against two, where one of them hath cause of privilege, his privilege now shall not be allowed to him, for where the common Law and a private custom and privilege meet together, the common Law shall be preferred, 9 Ed. 4. 14. and note if the privileged person of this Court will unruly surmise that one who is impleaded in another Court is his servant, and thereupon procure a Superedeas, whereby the Plaintiff in that

that Court is discharged, an Action on the case will lie against such an Officer.

Note, that if a Clerk of this Court do sue an attachment of privilege against another, by which he is condemned, that a *Capias ad satisfaciend.* lyeth not upon an *Attachment of privilege.* *fac'* shall not lie against the Defendant, because no *Cap.* or process of outlawry doth lie upon such a suit of attachment, *sed quere*; And therefore if a man be condemned upon a Recognizance, execution upon his body by a *Capias* doth not lie, *Dyer* 192. & 306.

Divers Observations concerning the Chancery.

THis Court is *Officina justitie & equitatis*, for the store of things and causes therein of divers Natures, and those of greatest price; also the Chancery is said to have two powers, *viz.* ordinary and absolute, *Stansf. prog.* 65. b. *Chancery hath two powers.*

The Chancellour may hold plea as well *extra terminum* as *infra*, in matters concerning the one jurisdiction and the other, *F. N. B.* 26. I. *Broo. Jurisd.* 106. for if the adjournment of the Term be, the Chancery shall not be adjourned, for this Court is ever open, 4 *E.* 4. 2. for a man may have process out of this Court at any time, *Cromptons Jurisd. del Courts.* 42. In this Court by the Chancellor are all the Kings Patents and Commissions sealed with the great Seal; Into this Court Offices found by the *Escheator*, *Virtute brevis*, are returnable, 4 *Ed.*

4.14. *Stamf. prog.* 70. b. and also, may those which he found *virtute officii*, *Co. lib.* 1. 42. b. Out of the Court issue, &c. *Sci. fac.* to revoke the Kings Letters Patents, and here is traverse to be made to any such Offices as the cause shall require; here are the Widows of the Kings Tenants to be endowed, and many other cases there are, which were too long for this Treatise to rehearse.

Warrants for the great Seal.

The form of
passing of Let-
ters Patents.

Concerning the Kings Letters Patents this is the course, viz. if they pass by Bill signed *per ipsam Regem*, then the Bill signed remaineth with the Lord Chancellor for his Warrant; And when it passeth by Bill signed and privy Seal also, then the privy Seal remaineth with the Lord Chancellor or Lord Keeper, and the Bill signed remaineth with the Clerk of the Signet; and the Lord privy Seal hath an abstract of it for to make the privy Seal by, and then the Letters Patents are subscribed *per breve de privato sigillo*: And if *per auctoritatem Parliament* be added, then it must pass according to the Stat. 27 H. 8. c. 11. And when the King signeth the Patents himself, the signature and great Seal do pass together at one and the same time, and then it is subscribed *per ipsam Regem & totum consilium in Parlamento*, or to the same effect, *Co. lib.* 8. 18. b.

Every Warrant sent by the King to the Lord
Chan=

Chancellour at the day of the delivery of the same the Chancellour shall do Letters Patents to be made upon the Warrant bearing date the day of the same delivery and not before in any wise, and if any Letters Patents be made from henceforth to the contrary, they shall be void by the Stat. of 8 H. 6. cap. 1. and for the full exposition of the Stat. see *Plow.* 491. and *Dyer* 133.b.

Note, that by the common Law no Grant of any Land is available from the King, or pleadable but under the great Seal of England, *Co. lib.* 2. 26. But there are three remedies to have it under the great Seal, as the cause shall require. First, He may have a duplicate at the sealing of the Letters patents. Secondly, If they be lost, and afterwards found again, then they shall be returned again into the Chancery to be cancelled. Thirdly, The party may have an exemplification upon the inrolment.

No Lands pass from the King, but under the great Seal.

Exemplification and Constat, and their differences.

And because the Stat. of 6 Ed. 6. c. 4. and 13 Eliz. cap. 6. do extend to make an exemplification and constat of Letters Patents to be pleadable; It is requisite to know the diversity between an Exemplification and a Constat, and the signification of other words by which Letters patents are usually named, viz. *Inspectimus*, *Innotescimus*, & *Videmus*; An Exemplification being in this form, *Jacobus Dei gratia*, &c.

*Exemplificatio
and Constat
their difference.*

The Practice of the High Court

Omibus, &c. Inspeximus irrotulamentum quorundam Litterarum patent, &c. And it doth recite the Record verbatim, and concludes with this form, *Nos tenorem Litterar. patent. prædict. &c. ad requisitionem, A.B. duximus exemplificand. per præsentem, &c. In cujus, &c.* And it is called an *Inspeximus*, because it beginneth after the title of the King, with *Inspeximus*, and it is called an exemplification *a re ipsa*, because of the Record by which it is exemplified, as it doth appear by the end of it, *Duximus exemplificand. per præsentem*; And the *Constat* doth begin after the title of the King, viz. *Constat nobis per inspersionem rotul. Cancellarie nostre quod Dominus Henricus nuper Rex, &c. litteras suas fieri fecit patentes in hæc verba, &c. Henricus Dei gratia, &c.* and recites all the Letters Patents verbatim. *Nos autem quia litteræ patentes præd. sunt casualiter amissæ sicut A. B. nobis in Cancellaria nostra personaliter constitutus Sacramentum præstitit corporale, & quod ipse brev. præd. si eas in posterum reperiri contigerit nobis in Cancellariam nostram præd. præstiterit cancellari. tenorem irrotulamenti ad requisitionem ejus duximus exemplificand. per præsentem, &c.* And it is called a *Constat*, but nothing is exemplified but the tenour of the Record. Also by the premisses it may appear, that a man cannot have a *Constat* without Affidavit as by the form of the *Constat* it appeareth; But an *inspeximus* may be granted without Affidavit; and for the antiquity of the *inspeximus* or exemplification read, *Co. lib. 5. 54.* and *lib. 8. 28. b.* An *innoscimus* and *videmus* be all one, they are alwayes Charters of Feoffment, or of some other

other instrument which is not of Record : and the *innotesimus* doth begin in this form, *Rex vobis, &c. inspeximus quoddam scriptum factum per A. B. factum B. C. sigillo ipsius A. B. sigillat (ut dicitur) in hac verba Sciatis presentes, &c.* And reciteth the instrument verbatim, & hoc omnib' quorum interest aut interesse poterit in premissis *innotesimus* per presentes. In cujus, &c. And it is called *innotesimus* in the end of it; and sometimes it doth commence *Videmus quoddam scriptum, &c.* and then it is called *Videmus* *ibid.*

Innotesimus & videmus all one.

Nota, It is a received opinion, That if the Kings Letters Patents be eaten with Rats, or ruined by any means, so that the Patentee cannot have a *Constat*, yet he may have exemplification upon the Record, but a *Constat* is never had but upon the losing of the Patents.

A Constat alwayes upon losing of the Patent,

Vide Dyer 179. b. Le case del clerk del Ham' per H. 8. at Sir. Ralph Sadler and Jo. Hales in term' vitæ eor' &c. and there wee may see the nature and force of a duplicate, which hath no force when the original Patents is cancelled, because the Chancellour makes it at his pleasure without any Warrant from the King.

The force of a Duplicate.

Writs of Chancery.

There are three kind of Writs in the Chancery. 1. Writs of Course. 2. Of Grace. 3. Of Form. 1. Writs of Course be all Originals, as of Debt, Trespass, and such as are returnable at common Law.

Three sorts of Writs of Course, of Form, and of Grace.

Law. 2. Writs of grace be Subpœnas, especially *Supplicavit*, *Certiorari super causam*, *Habeas corpus*, *Procedendo*, *Ne extat regium*, *Injunctions* and such like. 3. Writs of Form, as *De Placito clausit extremum mandamus*, &c. *Scire facias*, *Elegit* and a *Ducens tecum*, which is to be granted where the Defendant doth confess. Evidences, Money, Plate, &c. claiming no property in it, nor calleth any person to interplead for it.

In the Chancery is the Original or *Initium* then the middle or *medium*, and the building or *terminis* of all Suits. 1. *Initium*, viz. all original Writs at the common Law, Letters Patent, &c. 2. *Medium sive remedium*, after the Process began where Writs of *Procedendo* in *la querela vel in causa ad iudicium conceduntur*. 3. *Finis*, viz. *ultimum refugium sive remedium* after Judgement had for the Plaintiff, viz. Writs *de executione iudicij alicui nulla tenus deneganter*, and Writs of Error for the Defendant, special pardons of Grace, and common pardons by Parliament, to relieve many that are grieved and vexed.

Commencements of Suits.

All Commencements of Suits are by Writ original out of Chancery under the great Seal *Teste Rege* into the Kings Bench, Common Pleas, or into the Chancery it self, as the cause shall require, for until the return of the Writ the Court is not said to be possessed, neither can those Courts hold Plea, but upon the original returned before them, and therefore where on an original returned tarde, i. e. *Ad eo tardius venit quod executionem inde facere non potui*; *Th* *alias* and *plures* shall issue out of the Court where

Of Chancery unfolded.

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where the original is returned, *Teste* the chief Justice, for by the return the Court is possessed, but if no return be made then the *Alias* and *Plures* shall also issue out of the Chancery *Teste* the Reg.

Original Writs be so called, because they first deduce the matter into Suit, and thereby the Sheriff is commanded, that if the Plaintiff and to him pledges (that is, some men to be his Sureties) that he will prosecute the Suit, then to execute the Process according to the favour of the Writ against the Defendant to be before the Justices at a certain day to answer the Plaintiff; And so is the form of every Original, *Si querens securum te fecerit de clamore suo prosequendo. &c.*

Plegij prosequendo *Joannes Do. & Richardus Ro.* But in these days the entry of the Pledges, is but *pro forma* *factum*, and yet for default of entering them it is Error. And note that if any Attorney of the Kings Bench or Common Pless, or any Officer or Clerk of the Chancery do sue any stranger in their proper Court by Attachment of Privilege, that although these words *viz. Si querens te fecerit securum de clamore suo prosequendo, &c.* be not in such Writs of Attachment, yet such an entry thereof must be also made as at the end of the Court, *Dyer 288. a.*

The original Writ ought to be true Latine, for it be *hab. hoc breve pro hoc breve, 9 H. 7. 16.* *uxorij in a præcipe quod reddat*, by a Woman where it ought to be *uxori, &c.* the Writ shall

The original Writ must also be formal, *viz.* Original writs must be formal. whole

Original Writs,

Plegij de prosequendo in Writs of attachment of privilege not entered, yet may be allowed.

False Latine abates an original Writ.

wherein the
Chancery is a
Court of Record.

whole before the moyety or parts, *magis dignum* before *minus dignum*, &c. Finch. 53.

The Chancery is a Court of Record in matters there treated of, appertaining to the common Law, and wherein the proceedings are, and must be according to the Chancellors ordinary power, as in case of repealing the Kings Letters Patents by *Scire facias*, or upon Pleas of Debt, by Attachment of Privileges in the Court, and such a Plea discussed, though is a good Bar at the common Law, for upon those Writs of Error lie in the Parliament 37 H. 6. 14. b. *Prisor.* 8 E. 4. 6. by all the Justices; And if matter of conscience arise upon those causes in their proceedings, the Chancery cannot adjudge them according to conscience, but according to common Law, and for matter of conscience the Defendant must prefer his English-Bill to the Chancellors for his absolute Authority, and these two Authorities cannot be misht-masht together and are miscellaneous, for that would breed confusion.

Quando duo iura concurrunt in una persona, a quo est, ac si essent in diversis; Vide 11 E. 4. 9.

Perjury is punishable by the Statute of *Eliz. cap. 9.* And a man would have brought his English-Bill in Chancery for Perjury committed there, *contra formam Statuti*, &c. but it was resolved, that it was not good for the person given. *Dyer 288. a.* for if the Chancery will examine Perjury committed in the Court as it may by the Statute, then it ought to be a Latine Bill, and pleadable in Latine, and issue to be joyned there, but to be tryed in English &c.

Upon the like reason are divers cases in the common Law, *viz.* A man hath cause of Action of certain Lands, part whereof lyeth within the jurisdiction of the Sheriff of a Shire, and the rest within the Cinque-ports, the Plaintiff in this Case may not have one Writ for all, because of the several qualities and jurisdictions, but he must have one Writ directed to the Sheriff for that part within his Bailiwick, and another to the Guardian of the Cinque-ports, for that part within his franchise.

A man doth commence his Action against the Defendant in *Custodia Mariscalli, &c.* the Defendant, hanging the Plea, is committed to the Fleet in Execution upon a Condemnation in the common Pleas or Exchequer, the Plaintiff in B. R. cannot pray the Defendant (being condemned) may remain in the Fleet in Execution for him, for having once chosen his prison (*viz.* the Kings=Bench) he cannot afterwards alter it, no more than where process is directed to the Coroners, it shall not afterwards be directed to the Sherff, although there be a change of the Sheriffs, *Dyer 297. a. b.* Else so if the Plaintiff bring a Writ which is grounded upon the Statute-Law, he must have a Judgement pursuing his original, which is the foundation of this Suit, and not a Judgement upon the common Law, *Co. l. 74. a.*

J. S. acknowledged a Recognizance in Chancery to *J. Ognal* of 200. *l.* upon which Recognizance *J. O.* did sue out a *Scire facias*, and upon 2. Nichils returned; Judgement was given, *Ideo considerat' est per curiam quod præd.*
O.

The Practice of the High Court

O. recuperet versus J. S. 200. l. and that the said O. should have Execution against him; upon which O. did sue a *Levari facias*, & thereupon was returned that J. S. had nothing, and thereupon the Court did award a *Capias ad satisfaciendum*, by force whereof the Sheriff did arrest the body of J. S. and after the Prisoner did escape, and it was resolved per totam curiam, that the awarding of the *Capias ad satisfaciendum* was erroneous, for by the Law the Comptor was not liable to the Execution, for that his Lands, Goods, or Chattels are only liable either by *Fieri facias*, or *Elegit* by the Statute of westminster 2. cap. 18. and the tenor of the Recognizance doth express, that it is to be levied *De bonis & catallis terris & tenementis* J. S. *ad quorumcunq; manus devenerunt*, &c. and therefore no *Capias ad satisfaciendum* doth lie in the case, because no process of Outlawry in the Court of Chancery doth lie upon the original. *Dyer 306 Puttenham's case.*

Note, That it may appear by the premises that the saying of the Chancellour, 4 H. 7. *Quod nullus recedat à Curia Cancellaria sine remedio*, is erroneous; for *Finiaux* ch. Justice thereupon answered him, *Sr. Si nullus recedat sine remedio, ergo nullus indiget esse confessus.* But since the Law of the Land is for many things, & many things are to be sued in this Court which be not remedial at the common Law; But the Chancellour 8 E. 4. 5 6. said more reasonably confessing that in Cases where Statutes do give a title of right unto a man, we are bound to obey it.

where a statute gives a title of right, the Chancellour ought to obey it.

Proceedings against a privileged Person.

A Declaration against a privileged man for Debt, or any thing whereof the Court holdeth Plea, is delivred to one of the six Clerks, whom the Plaintiff maketh his Attorney, and he hereupon giveth a day (as it is commonly termed) which is a week, viz. (the whole next return) to the Defendant to answer, which day is entred into the six Clerks cost-book in this manner; *Roberts con. Johnson. Dies usque xv^a Michaelis in placito privi-*

Day being thus given, the Declaration under the Attorneys hand is sent over to the petty Clerk by one of the said Attorneys Clerks, which Declaration is briefly entred by one of the Clerks there, and likewise the day given to the Defendant to answer in a Roll there, which is called *Rotulum Remembranc^e parvæ bagæ*; At which day by course of the common Law; if the Defendant plead not, he is fore-judged the Court, but the course of the Chancery hath of late to allow the Defendant a day of continuance, that is, daytill the next return after the day given him to answer, as aforesaid, which is in this manner.

The Defendant retaineth one other of the six Clerks, and he imparleth for him, which is entred in the six Clerks cost-book in this manner; *Robertus con. Johnson li. Co. usq; Tres. Mi.*
at

The Practice of the High Court

at which day it is sent over to the petty Bag be entred in the aforesaid Roll next under said Declaration.

The said day of imparlance being past, whether day; viz. commonly five dayes of a week (which is commonly called a peremptory day) is given by the Plaintiffs Attorney, and entered in the petty Bag, as aforesaid to the Defendant to plead, or else Judgement is to be entred against the Defendant.

If the Defendant plead, his Plea is delivered by his Attorney to the Plaintiffs Attorney, then if the Plaintiff will proceed to a tryal, he is to joyn up the issue (if he may, for in some cases he cannot) or else the Plaintiff is to reply and to give the Defendant a day, or whole return to joyn up the issue, which is given and entred as the day to answer, *Articulus*. And if the Defendant by that day joyn not the Issue, Judgement is entred by *Nihil dicitur*. It is to be noted that after a peremptory day given, the Defendant cannot pray Oyer of bond and condition, or such like, as of late is used for a meer delay.

But if Issue be joyned up either by the Plaintiff or Defendant then is the Record made, and the same with a *Venire facias* is sent into Kings bench to be tryed as an action there at law, and upon Judgement there, Execution is then upon there awarded.

But if the Defendant refuse or neglect to appear at the day given him to answer, or to plead (for he may plead at that day if he will) then is Judgement entred against him and execution awarded.

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Upon Judgement either by default or *Nihil dicit*, some of these Writs of Execution are awarded; If for Debt the plaintiff may have an *Elegit* by *Westminster*, 2. cap. 18. or else a *Levari facias*, or *Fieri facias*; And if the plaintiff cannot levy his Debt and Damages, then shall he have a *Capias ad satisfaciendum*, either for all, or so much as remaineth unsatisfied.

The Judgement being satisfied, the plaintiff by himself or his Attorney (if the Defendant desireth it) doth acknowledge satisfaction upon the Judgement in the petty bag.

It is to be noted, That whatsoever day is given by any of the six Clerks, and by them entered in their Book, it worketh nothing if the same be not entered in the petty bag: *ut in Articulo 2.*

For a privileged Person.

The Defendant being arrested by an Attachment of privilege at the Suit of a privileged man, retaineth one of the six Clerks to be his Attorney; but he may not enter his appearance in the Register for discharge of his Bond entered into, to the Sheriff or his appearance in the Chancery; neither can the Defendant be said to have appeared until he hath put in Bail to the plaintiffs Attorney, according to the course of the Court, which is *Ad comparendum de deo in deum quousque placitum*

The Practise of the High Court

inde determinetur, to satisfy the Plaintiff all such sums of money as the Plaintiff shall recover against him by reason of this suit; then one privileged man putteth in his Declaration, and the proceedings thereupon are as before against the privileged man.

By the course of the Court the defendant is to put in four surety-men, or sufficient sureties, be the action never so small, *ut patet per decretum pro privilegio. fact. Mercer. 8. Die Novemb. in Cancellar. 4. 23 Eliz. inter Archibald, & Barret*, wherein the Defendant is bound in 400 lib. the summe of the action, and every surety in 100 lib. If Judgement be given for a privileged man in this Court, he may if he will take out Execution against the Defendant, as before *Articulo 8.* But if he will not, then may he take out a *Scire facias* against the Defendant and his Manucaptors upon the Bail; Whereupon if Judgement be had upon the said *Scire facias* in the Chancery, Execution is awarded as in the former actions; but if upon issue joyned and sent into the Kings Bench, and upon a tryal there, Judgement be given, then is Execution there awarded, *ut in Articulo 6.* And upon satisfaction of the Debt and Damage, the bail is to be discharged, *ut in Articulo 9.*

If either the plaintiff or Defendant upon Declaration of privilege or *Scire facias* demur in the Chancery, the Demurrer being joyned, a day is set down by the lord Keeper for arguing thereof before him, and if upon argument it fall out to be a *Respondere auster*, then Judgement is entered thereupon; and if it

be against the Defendant, then Execution is awarded. And if against the plaintiff, then it is *Quod quer. ut capiat per brev. vel per narrationem*; but if it be a *Respondeas ultra*, then is the Defendant to pay costs, and a day is given for him peremptorily to plead or Judgment to be entered, &c.

Upon a Recognisance.

UPON a Recognisance acknowledged in the Chancery, it is used to sue two *scire facias*'s into Middlesex (if the Conusor be living) where the Chancery is, and upon two Nichils return upon the said *scire facias* (which equals a summons) day is given by one of the six Clerks retained by the plaintiff in the *scire facias*, and day entered in the petty Bag, *ut Articulus 2*. And if the defendant appear not, judgement is then entered, and Execution awarded against him, *ut Articulus 3*. And if the defendant appear, then the proceedings, *ut prop. infra*. But if the Conusor be dead, then one *scire facias* is awarded to the Sheriff of Middlesex against him, who thereupon returneth a *Mortuus*, and upon that return *scire facias*'s are awarded against the heirs of the Conusor, and the reversioners into all Counties, where the Conusor hath any Land *Tempore recognitionis vel unquam postea*, who must be summoned, and upon return thereof

The Practice of the High Court

day is given against them, and the *Scire facias* and day entered in the petty Bag, *ut Articulus prop. supra*. And if they make default of appearance, judgment is entered by default, *ut supra Articulus 7, and 8*. But if the Defendants appear, then are they to plead, and the proceedings thereupon are as upon a Declaration.

If an Infant acknowledge a Statute of Recognisance, if he will avoid it he cometh into Court in Term time, and in the Vacation to the Lord Keeper, and is inspected during his minority, and then, or before he bringeth his *Scire facias*, and if the Conuzee do appear he may plead if he will, but the plaintiff is put to prove his nonage either by Witnesses in Court or otherwise.

Traverse of Office and Monstrans de droit.

UPON an Office found after the death of the Kings Tenant, the Tenant or any other grieved thereby upon a Bill of complaint exhibited into the Court of Wards, is licensed to traverse or to sue a *Monstrans de droit*, which being drawn and ingrossed is delivered into the petty bag, which travers or *Monstrans de droit* his Majesties Attorney General often-times upon sight of Evidence doth confess to be true, and thereupon an *Ouster le mayne* is awarded, &c.

101
285
Of Chancery unfolded.

or else he will plead thereunto, and thereupon
issue is joyned, and a record of the whole, and
a *Venire facias* thereupon is sent into the Kings
Bench, *ut Articulo 6.*

Habeas Corpus ad satisfaciendum.

IF *A. B.* be prisoner in the Fleet or any other
prison, and *C. D.* hath a Judgment in Chan-
cery, or a Statute-staple to charge him with, he
shall have a *Habeas Corpus* mentioning the
Judgment or statute returnable in the Chan-
cery, by vertue whereof he shall be brought
into the Court, or before the Lord Keeper, and
upon showing forth the Statute or Record of
the Judgement, the prisoner shall be commit-
ted to the Fleet in Execution also for the
same, if he cannot shew good cause to the con-
trary, as a Release, &c. All which is entered in
the petty-bag.

Audita querela super Bail.

IF a man be taken in Execution upon a Sta-
tute-staple or Judgment in the Chancery,
and have good cause to avoid the Execution,
the course is by petition to signify to the Lord

The practice of the High Court

Keeper his Cause, and for the more caution, the Lord Chancellor Viscount Brackley would upon the petition be certified under the hands of the plaintiffs Council, of good Account of the Law in that point specified in the petition; and thereupon the Lord Keeper doth appoint some Master of the Chancery to take sufficient Bayl according to the course of the Court, of which he ought to have great care, for that the Statute and Judgment are thereby avoided, and the plaintiff discharged, so that if it fall out upon tryal against the plaintiff, the Defendant hath no remedy, but against the Bail, which if they be insufficient the Defendant loseth his Deb, as hath been often times seen.

Statute-Staple

The Statute-Staple is acknowledged before the Chief Justices of either Bench, or in their Circuits or absence before the Mayor of the Staple of Westminster, and the Recorder of London, 23 H. 8. cap. 6. And the manner of suing Execution is thus, The Statute being forfeited, the Comorze bringeth his Statute to the Clerk of the Statutes who endorseth the same on the back of the Statute, Certificat in Cancell. *in li die & anno per T. H. Clerici Stat. &c.* and maketh Certificate thereof to the Lord Keeper, who thereupon awardeth Extent, which

which being executed and returned into the
petty Bag, and the Statute filed there, a *Libate*
is thereupon awarded, which being also execu-
ted, is there likewise filed if the Conuzee plea-
seth, but it is not of necessity.

F I N I S

which being executed and returned into the
 post, Bag, and the same filed there, a libate
 is thereupon granted, which being also execu-
 ted, is there likewise filed in the Court place
 last, and it is not necessary.

FLY 12

CHOYCE

CASES

IN

Chancery.

In a Cause between Pretty and Porter. It fell out that the Ancestor of Michael Pretty the Defendant had devised Land to his eldest Son, on Condition he should pay Legacies of 40 l. to his Sisters at the Age 21 years, or else the Land to remain to the Legacies.

The eldest Son enjoyed alwayes the Land, and after having brought the extent of a Statute, which the said Heir had acknowledged. Pretty sued on him after 34 years possession, supposing the condition to be broken for non payment of the Legacies: But proof being made of payment, not precisely, but by acquitances; The Chancellor ordered, that the possession should continue, should not be stirred upon payment, but decreed it with the Plaintiff. Et non per Coke Attorney. That upon such a condition the money must be demanded at the instant of coming to 21 years of Age: And by the

Legacies devised out of land upon condition,

the Lord Chancellor that the condition was void, for the Heir should have entered; but Judgement was given in the Kings Bench, and the Legatees should have the Lands as being limitation, and not a condition, 5 Febr. 1603. *cobi.*

*Examination of
witnesses in
causes to be tri-
ed in Ireland.*

*Jurisdiction of
Ireland over-
ruled.*

In a Case between Sir Robert Digby Plaintiff, and the Earl of Kildare Defendant, Lands in Ireland, the Defendant demanded, upon Petition to Gawdram Wardour Justice, they reported that Witnesses might be obtained upon the Bill in perpetual memory be sent close over into Ireland, and there to be used as the Judges of that Court who should have consaunce of the matter in Ireland appoint, and the lord Chancellor said, the matter had originally begun in Ireland, Commission under the great Seal of Ireland, Witnesses appertaining to that cause, might have been examined in England. Philips of Council with the Defendant, moved they sought to prove forgery, and then Witnesses were examined here and committed for perjury, they were not punishable here, as was out of the Statute of 5 Eliz. But the Chancellor said they were punishable. *Secundum quomodo* 14. April. An. 1603.

*A steward is
Judge at Com-
mon Law of
Copp hold cases,
&c. the lord of
the manor is
Chancellor
there.*

In a Case of two Coppingholders of the manor of Bytles in Surry, one claimed by ancient Title against which the possession was gone since 5. of E. 6. The lord Chancellor would not retain it in Chancery, but bid him try it in the Court of the Mannor; and if need were, a learned steward or assistant to him should be appointed by this Court. And

Writ of false Judgement lay of a Coppy-
case in a Mannor, because from a Steward
they might appeal to the lord as a Chancellor;
April. 1605.

In Bevels case *versus* Mannors & uxorem Bevels case of
ing in remainder in tail with Fee expectant, Deeds.

Plaintiff suing for the deed of in tail which was in
the Lady Bevels hands being Tenant in Joynt-
ure, it was doubted whether upon conveyance
the Deed should go to reversion or the
issue. And by the Attorney strongly
for the Feeoffee. But the Lord Chancellor was
contrary, and at last ordered that the Heir

in common Law, viz. Bevel should have all
that whereby he might voucher rebur, but
not of warranties against himself for mainten-
ance of the Joynture; and it appeared not whe-
ther the Joynture were life or fee, 30. Aprilis

Note, that the Lord Chancellor said that
things be good to common intent of things,
not in the Defendants knowledge alone
if publickely done, ought not to be cavelled
by Council, who thereby delay their Client;
But if it be of things secret, it is other-
wise; 30 April. 1605.

In case of an Occupant, as house and land
leased to J. S. for term of the life for three of
sons for one rent, they that have the pos-
session of the house must have the occupancy
of the land, for otherwise every servant that
there digging should have a several poice, and
this *positio* is not sufficient, but there must be a
man also published to hold it as occupant, 30
April. 1605.

Bevels case of
Deeds.

Answers good
to common in-
tent, but things
secret not to
pass doubtful.

Answers good
to common in-
tent, but things
secret not to
pass doubtful.

Case of Bevels
and uxorem

Decree not signed, now ordered by the L. Chan. to be done by a day.

In a cause between Pope and Worth, cause was heard and ordered for the Defendant who sued out an *Exequutions ordinis*, but not up the decree the next term, whereupon the Plaintiff put it in hearing again without new order for the same; And whether he should pay costs for so doing, was debated, but not judged. *Et nota per Wilkinson*. Except he fetch it the same term, or before the next, he get the Lord Chancellors hand to it and for the enrolling, he shall take no benefit thereby. But the excessive charge thereof makes it slow in the same, 1 Maj. 1605.

Widow & Heir of purchase ordered to pay the money for lands himself should have paid.

Inter Herle and Butler lands sold, and given for the same money and emballeted, same comes to the Widow of the Purchaser lie and the heir in reversion being under one year or thereabout, they covenant to the money, and being sued in Chancery, Defendants alledged the woman had it but life, and that the heir was under age at the making of the covenant, & non allocatur, but ordered by the lord Chancellor that they should pay it, and agree amongst themselves the rate, 3 Ju. 1603. 5 Jac.

Infant sued

Mistaking names of Corporations.

Inter Slocomb. & al. *Nota*, by the L. Chancellor *Ellesmere* said, that it is no conscience a Corporation to avoid their Grant by a millmer. And from the time of the first printed year-Books. They would take advantage thereof when they were sued sometimes, *sed contra*: And Tenant for years after his year determined yeilding possession to one claimant

another title dealeth dishonestly, though the
 for will presently thrust him out, not so of
 grant at will. And therefore in this Case the
 fession ordered with the first Lessee against
 ale and Tenant.

A Writ is awarded against the Defendant, his
 cancellors and Attorneys, that they upon pe-
 nalty of 100 £ shall sue no execution of a
 judgement in an Action of debt commenced by
 the Defendant against the Plaintiff at the com-
 mon Law, until further order be taken therein
 by this Court of Chancery, *Robert Cotes Clerk*
Plaintiff, John Freston Defendant. An. 5. & 6.
& M.

*An Injunction
 to stay Execu-
 tion.*

John Wynne ap Rice maketh Oath that both
 parties be inhabitants within the jurisdiction of
 Commissioners in the Marshes of *Wales*,
 wherefore the matter between the said parties is
 committed to the determination of the Commis-
 sioners. *William ap John ap Richard Plaintiff.*
Age, viz. Riffish Defendant. An. 5 & 6. P.
M.

*Jurisdiction
 of Wales allowed.*

Green plaintiff ap Jean. f. 3. pleads the juris-
 diction of *Wales*, and dismissed. *An. 5 & 6. P.*
M.

*Jurisdiction of
 Wales allowed.*

Thomas plaintiff ap Meredith f. 3. pleads the
 jurisdiction of *Wales*, and it is allowed him by
 the Court *An. 5 & 6. P. & M.*

Consi.

Thomas Heiber, one of the Defendants made
 as well for the impotency of *James Heiber*
 another of the Defendants, as also that all the
 parties are inhabiting within the jurisdiction of
 Commissioners in the North parts; Therefore
 the matter is committed to the determination of
 said Commissioners. *James Watrop Plain-
 tiff,*

*Jurisdiction of
 the North al-
 lowed.*

Confimiliter.

tiff, James Heyber and Thomas Heyber Defendants, *f. 2. An. 5 & 6. P. & M.*

Rogers Plaintiff, Meerehouse Defendant, pleads the jurisdiction of the North parts, and dismissed thither, *An. 5 & 6. P. & M.*

The Defendant payeth costs for not attending the hearing.

The Defendant did not attend the hearing of the cause at the day appointed by order of the Court, therefore he is ordered to pay to the plaintiff six shillings eight pence costs, and the Cause is to be heard *mens. Mich. next*, at the Defendants petit, John Taylor plaintiff, Rowland Walker Defendant. *Anno 5 & 6. P. & M. f. 3.*

Confimiliter

Mason plaintiff, Rotheram Defendant, payeth costs for not attending the hearing of the Cause. *An. 5 & 6. P. & M. f. 17.*

Con.

Lacy contra Price, pays costs for not attending the hearing of the Cause. *An. 5 & 6. P. & M. f. 5.*

Conf.

Bellamy plaintiff Dean. Defendant, payes costs for not attending the hearing of the Cause. *An. 5 & 6. P. & M. f. 17.*

The Plaintiff payeth costs for not attending the hearing.

Forasmuch as the plaintiff did not give his attendance neither by himself nor Council for hearing of the Cause at the time appointed by order of the Court, therefore it is ordered the Plaintiff shall pay the Defendant for his costs six shillings eight pence, and the matter to be heard between this and Tuesday next, John Clark plaintiff, Thomas Avery Defendant. *An. 5 & 6. P. & M.*

The cause is dismissed for the plaintiffs not attending hearing.

Creed plaintiff, Long Defendant, the Defendant dismissed for the plaintiffs not attending the hearing, *An. 5 & 6. P. & M.*

A final Decree is made for the plaintiff, by

Choyce cases in Chancery.

III

the Record thereof signed with the hand of
lord Chancellour as doth appear. And the
record is delivered to Thomas Porel for the
Plaintiff to be inrolled. *William Novel Plaintiff*
William Greve Defendant. § 6. P. & M.

The manner of
entering of a
Decree.

Inasmuch as the Defendant hath commen-
an Action of Debt of 200 l. against the
Plaintiff in the Kings Bench, whereby the King
Queens Majesty are hindered of their Fine
which should have been paid upon the origi-
which should have been pursued out of this
court: Therefore an Injunction is awarded a-
gainst the Defendant upon the pain of 400 l. to
resist until further order be taken by this
court. *John Knight plaintiff, Thomas Newham*
Defendant. § 6. P. & M.

Injunction for
defrauding the
Kings fine.

Issey plaintiff, Barber Defendant, stayed by
Injunction for not paying the Kings Fine. § 6.
P. & M. f. 8.

Confirm.

Greencrogers contra Hennage Defendant: The
Defendant stayed by Injunction for not paying
the Kings Fine, § 6. P. & M. f. 12. *Cum*
hinc alius.

Confirm.

Dominia Dorothea Guidor plaintiff, Frances
Defendant, whereas an Injunction was
granted for stay of the proceeding at the com-
mon Law for not paying the Kings Fine; It is
ordered because the Plaintiff hath that day
paid her Fine, that she may proceed notwith-
standing the Injunction to stay her, *Anna El. f.*

The fine to the
King paid, the
Injunction is
discharged.

Inasmuch as Serjeant Calye of Council
for the Plaintiff, hath undertaken that the
Defendant shall not distress or otherwise molest
the

A ground to in-
duce the Court
to retain a cause
in Court.

*Witnesses in
perpetuum rei
memoriam
published.*

the Defendant at Common Law; It is ordered that the matter shall be here retained, and the Defendant make a better answer, *Sheldon* plaintiff, *Barnes* Defendant. 5 & 6. P. & M. f. 10.

The plaintiff hath taken Oath, that the Depositions of witnesses examined on his behalf in *perpetuum rei memoriam*, remaining in the Court, are to be given in evidence at the Common Law, therefore publication is granted of the same witnesses. *Tindal* plaintiff Defendant 5 & 6. P. & M. f. 10.

*Injunction upon
a petition.*

An Injunction is awarded against the Defendant upon pain 1000 l. to surcease prosecution of any action against the plaintiff touching the matter in the petition exhibited by the plaintiff into this Court until further order be taken by this Court, *Knight* plaintiff *Bowman* Defendant. Anno 5 & 6. P. & M. 11.

*Stay of Execution
by assent of
Council.*

Richard Forset being of Council with the Defendant, hath undertaken in open Court that he nor any other in the name of the Defendant shall call for Execution of Judgement in an Act. on commenced by the defendant against the plaintiff at common Law until the Court be made privy therunto. *Taylor et al* plaintiffs, *Earl of Lenox* and *Dame Martha* his wife defendants, 5 & 6. P. & M. f. 11.

*The plaintiffs
Father seized
in fee. A con-
dition to re-en-
ter for non-pay-
ment of rent:
deviseth the
land to another.*

The plaintiffs Father did purchase in Fee farm to him and his Heirs the mannor of *Easton* in the County of *Derby*, of one *Ramsey* march, tending eight pounds rent with a condition of re-entry for non-payment of the rent. The plaintiffs Father devised the said man-

to the defendants wife for her life. And the plaintiff sued the defendant to have him put in *duccens tecum*, bond to pay the said eight pounds rent lest the land should be forfeited, and to have the Evidence concerning the said mannor, and ordered the plaintiff should have a *Subpoena* to the defendant with a *duccens tecum* for the Evidence, & to enter bond for payment of the said rent. Pime plaintiff, Smith defendant. Anno 19 Eliz.

Forasmuch as the plaintiff hath procured process against the Defendant unto Attachment of proclamation, and yet hath exhibited no Bill against him the said defendant, he now appearing thereupon; Therefore the plaintiff is adjudged to pay to the defendant thirty three shillings four pence costs for his wrongful vexation, Plowright plaintiff, Parmeter defendant. Anno 19 Eliz.

Process of contempt issued out, the Defendant appears, no Bill filed, and costs awarded.

The plaintiff being copyholder, sued the defendant being the Lord of the mannor, to accept a reasonable fine for his admission into certain copyhold lands, and offered five pounds for a fine, so as the Defendant would never take above two years value of the Tenants of the mannor for a fine upon any admission, which the defendant yielded unto; and therefore ordered by assent accordingly. Killick plaintiff, Eyes, Best, Bristow and Goulton defendants. Anno 19 Eliz.

Two years value in fine for admittance to copyhold.

Forasmuch as Mr. Dr. Tale, one of the Masters of this Court, to whom the consideration of a contempt in the breach of an Injunction was committed by Master Serjeant Powtrel was referred, hath made report that the said Serjeant Powtrel after the open publishing of the yet Serjeant

The Plaintiff having an Injunction against the Defendant and published;

same Powtrel mo-

bed for judgment, and is enjoined not to depart the town without licence.

same Injunction, and after perfect knowledge thereof did move at the Kings Bench-Barr for Judgment for the Defendant, iterating his motion for the same, which he did after the sight of the said Injunction. Therefore the said Mr. Serjeant Poutrel being this present day called into this Court, is openly enjoined in the sum of one hundred pounds, not to depart out of the Town until he shall be licensed thereunto by the Right Honourable the Lord Keeper of the Great Seal of England. *Allen* plaintiff, *Dingley* defendant. *Anno 19. Eliz.*

A Bond made to the L. Keeper upon a Commission of rebellion.

The like order was made the same Term against Master Robert Snagg for moving for the Defendant in the Kings Bench in the same cause.

A Subpœ. to testifie before the Mayor, the witness appearing found no Suit there, yet an Attachment gotten, but ordered to be discharged with costs, and after no Subpœ. to testifie before the Mayor without the L. Keepers hand.

The Defendant hath this day made his personal appearance in this Court upon a Commission of Rebellion according to this Bond made to the Right Honourable the Lord Keeper in that behalf.

The Defendant being commanded by Subpœ. out of this Court to testifie in a Case depending before the Mayor of London between one Ralph Sidel and Timothy Nottingham, the defendant came accordingly into the Mayors Court, and found there no matter depending, and yet nevertheless offered to be deposed, so he might have his charges, which was refused him, & yet nevertheless the plaintiff hath procured an Attachment against the said defendant which this Court utterly misliketh; Therefore the defendant to be dismissed with good costs, if the cause be not shewed to the contrary. And it is further ordered, that no Subpœ. ad testifican.

be made by any Clerk of this Court before the Major of London as aforesaid, without the Lord Keepers hand be first procured thereunto. *Siddal* plaintiff, *Butler* defendant. Anno 19 & 20 Eliz.

A joynt Commission went out to examine witnesses on both parts to 4, 3, or 2 Commissioners: three met and examined divers witnesses and appointed a new day to examin again. The defendants Commissioners took up the Commission and carried it away, and came not the day appointed. The plaintiffs Commissioners came and examined witnesses without Commission, and certifie these and the former Depositions taken with all the whole matter; And ordered that the Depositions certified be sealed up again, and so remain close in this Court. And a *Subpœna ducens tecum* is awarded against the Commissioners to bring in the said Commission. Thereupon further order shall be taken. *Denny* plaintiff, *Wilford* and *Hearing* defendants; Anno 19 & 20 Eliz.

An Injunction was awarded against the defendant for stay of an Action of the Case upon an Assumpsit by him brought in her Majesties Bench against the plaintiff for or concerning an agreement or contract for a Lease for the which before the plaintiff had exhibited his Bill. *Crowder* plaintiff, *Robinson* defendant. Anno 19 & 20 Eliz.

The Sheriff upon an Attachment returned *Capi Corpus*, & *languidus in persona*. Whereupon a *duces tecum* was awarded, and thereupon the Sheriff returned *adhuc languidus*. Forasmuch as *Walter Williams* made an Oath that the

After witnesses examined one of the defendants Commissioners another day appointed, cometh not; the plaintiffs Commissioners proceed to examine and certifie all without the other Commission; ordered the Depositions shall be preserved, and a *duces tecum* to bring in the Commission.

An Injunction to stay an action at Common Law the suite in this Court having the precedency.

The Sheriff amerced for making a false return.

defendant neither at the time of the return, nor now is so sick but that he goeth abroad; Therefore the Sheriff is amerced five pounds for his false return. *Arnold* plaintiff, *Roberts* defendant *Anno 19 & 20 Eliz.*

Copyhold surrendered to a man and his wife without words to carry the Inheritance; but because it was intended to be a fee-simple, therefore decreed to the Plaintiff and his Heirs.

John Beale Father to the plaintiff's Wife surrendered certain copyhold lands, parcel of the Mannor of *Ferneham, All Saints*, in the County of *Suff.* to *Richard Peake* and *Anne* his Wife (the said *Anne* being sole daughter and heir to the said *Beale*) without any words to carry an estate of Inheritance but onely in the C. is liberat. est inde seisinam Tenend sibi hered. & assign. suis. And for that it was meant by the said *Beale* to pass a Fee-simple, and many other Coppies as well in the same Mannor, as Mannors adjoynd were passed in like words; Therefore decreed, the plaintiff and his heirs shall enjoy the lands from the defendant and his heirs, *Peake* plaintiff, *Peake* defendant. *Anno 19 & 20 Eliz.*

The defendant being free of the Salters in London, & trading as a linen Draper, got a writ of privilege as servant to a Master of the Chancery to discharge an arrest, but disallowed, Jurisdiction

The plaintiff arrested the defendant in London in an action of 100 l. for Wares sold, and the Defendant using the Trade of a linen Draper, and free of the Salters, got a Writ of privilege out of this Court, supposing himself to be servant of *Doctor Clark*, one of the Masters of this Court, which this Court disliketh that any such person should have privilege: It is therefore ordered, that if the defendant be free of the Salters and trade as a linen Draper in London, he shall not be allowed his privilege. *Ducket* plaintiff. *Berwick* defendant. *Anno 19 & 20 Eliz.*

The defendant demurred unto the plaintiff's Bill,

Bill, for that he was inhabitant in the Countrey of Lancaster no Palatine of Lancaster : But because the plaintiffs are such as ought to enjoy the priviledge of this Court, viz. *Worsely* servant to the L. Keeper, and *Anderton* a Clerk of this Court ; Therefore a *Subpœna* is awarded to the defendant to answer or shew cause why he should not so do. *Worsely* and *Anderton* plaintiffs, *Tildesley* defendant. *Anno 19 & 20 Eliz.*

The plaintiff hath a lease in reversion granted unto him of certain lands in the defendants occupation by lease almost expired within a year, and the plaintiff hath Wood and Timber granted to him, and the defendant having no authority to sell the said woods, doth cut down the same and make waste. Therefore a *Subpœna* awarded against him to shew cause why an Injunction should not be granted against him. *Peterson* plaintiff, and *Shelly* defendant. *Anno 19 & 20 Eliz.*

The plaintiff exhibited a Bill of Revivour against the defendant to revive a suit, which before that time the plaintiffs father had commenced against the now defendant, which said Bill the defendant did in the plaintiffs Fathers lifetime answer. Therefore now for the defendants ease and avoiding his charge in coming up ; It is ordered, a Commission be awarded for taking the defendants answer, wherein the plaintiff may joyn. *Higeinson* plaintiff, *Marrowe* defendant. *Anno 20 Eliz.*

John Rogers made Oath, he left a note of the defendants appearance at Master *Blakes* house in *Eyram* in Hampshire, where the defendants most abiding : And that he hanged the

of Lancaster no allowed, for that the plaintiff ought to have priviledge of this Court.

The plaintiff in reversion of a Lease hath a grant of the woods, he in possession wastes the woods, Therefore an Injunction.

A Bill of Revivour begun by the plaintiffs father. A Commission to answer in the Countrey,

One hangs the Subpœna for a space on the defendants door,

and by a note in writing he leaves the day of appearance, and carries away the Writ to serve another.

Defendant demurreth because the suite is for goods, being a matter of Legacy, and for that one Executor cannot sue another ordered to answer.

The suite is to have remedy for altering a Record in the Mayors Court of London.

After two demurs the plain-

the Writ upon the door for a certain space. And after carried the Writ to Agnes Hides house and hanged it upon the door, she then being within the said house, who hath not appeared. Therefore several Attachments. Hide plaintiff, Martin and Agnes defendants, Anno 20 Eliz.

The defendant demurred, for that the matter of goods, chattels and specialties, being a matter of Legacie, is determinable by the Ecclesiastical Court. And further demurreth, for that by the order of the Common Laws of this Realm one Executor may not sue another, which causes this Court thinketh not sufficient; therefore a Subpœna. Croker plaintiff, Hambden defendant, Anno 20. Eliz.

The plaintiff by his Bill seeketh remedy in this Court for the altering or amending of a Plea of Record of Attachment in the Mayors Court of London. The defendant refused to answer, alledging, that the same fault, being amendable by the Common Laws of this Realm was amendable by order of this Court. It is ordered, that if the defendant bring a Certificate from the Judge of the Court in London, that the said plea was amended with the assent of the said Court, Then the defendant shall not be compelled to answer any further in this Court. And afterwards Pasche 20. Eliz. The Defendant brought a Certificate from the Recorder of London, that the Recorder was altered by order of the Court; and therefore the Defendant was dismissed. Wignall plaintiff, Bland defendant. Anno 20 Eliz.

John Bond late husband of the plaintiff, exhibited a Bill against the defendant, whereupon

the defendant demurred, and yet the said *John Bond* replied, and the defendant likewise demurred upon Replication, and after the demurrers put in, the said *John Bond* examined divers witnesses in Court, and died. And now his wife hath put in a Bill of revivour to have the benefit of the said witnesses; It is therefore ordered, that no publication of the said witnesses so unorderly examined, be published without special order of Court. *Bond* widow, plaintiff, *Killifit & uxor* defendants.

tiff examines witnesses, and dies, a Bill of revivour to have the benefit of those witnesses: But ordered that no publication be had.

Ralph Barker maketh Oath that one *Robert Love* the plaintiffs servant served the defendant with a *Subpœna* in his Masters name, but refused to deliver them the *Subpœna*, but promised them a copy, and appearing found no Bill in Court; Therefore an Attachment is awarded, and costs to be paid by the plaintiff, to the defendants. *Hardweck* widow plaintiff, *Barker* and others defendants.

Attachment want of a Bill.

Anno 21 Eliz.

The Defendant to a *Scire fac'* upon a Recognizance of 400 l. pleaded the Statute of Usury in a forreign County, but neither in person nor upon oath; ordered that the defendant shall before Wednesday next plead such a plea as he will stand to, or else the former plea upon his oath in person, else a *nihil dicit* shall be entered. *Morgan Wolf* plaintiff, *Powel* defendant.

A plea upon oath ordered, or a nihil dicit.

Anno 21 Eliz.

The Suit is to cause the Defendant to make sale of certain Lands which one *Cranach* former husband to the said *Anastace*, whose Executor she is, devised by his Will, should be sold by the Defendant within the year after his death toward the payment of his debts, the o-

Ordered for sale of Lands.

verplus to his wife. Three quarters of a year being past, and the defendant being offered seven hundred pounds for the land by the plaintiff, and the debts remain unpaid, and the lands like to fall if there be not speedy sale: Ordered upon motion the Defendant shall be in Court upon Wednesday next: And thereupon the Court will take such speedy order for the sale as shall be thought meet. *Stanby & Anastace uxor ejus* plaintiffs, *Blacewel & al.* defendants. Anno 21 Eliz.

Costs for want of a Bill.

The defendant made oath that one *William Cope* shewed him a Bill, affirming the same to be at the plaintiffs Suit, but refused to deliver the same or any note of his appearance; And yet the defendant appeared upon the same, and found no bill in Court at the plaintiffs Suit against him; and therefore the plaintiff is adjudged to pay the defendants costs. *Coxe* plaintiff, *Hopkins* defendant. Anno 21 Eliz.

Answer respited.

The said *Mintel* one of the defendants maketh Oath, that his wife hath a young childe sucking upon her, without whom he cannot directly answer. And that the other defendant is an Infant under the age of 21 years; Therefore they are respited for answer until Trinity term next. *Dale* plaintiff, *Mintel uxor ejus & Dale* defendants. Anno 21 Eliz.

A Suit against a man and his wife, the husband dieth, a Bill of revivour against the wife.

The plaintiff exhibited his bill against *Frevill* and *Jane* his wife and one *Banckes*. After *Frevill* died. It is ordered that the plaintiff may exhibite a Bill of Revivor against the said *Jane* in her own name and so to proceed. *Pate* plaintiff, *Jane nuper ux. Frevill & Banks* defendant Anno 21 Eliz.

In

In *Offley's Case*, *Nota.* the Lord Chancellor *Value of Lands* said, that no remedy is to be given in Chancery, extended, for extending over-low, except there be fraud or practice; And an *Audita querela* lies upon a second defeasance, whether the Statute be forfeit or not as well as upon the first. The principal Case was, *Offley* the Father lending money for usury, and taking a Statute, the same was forfeited, but not extended till the land came to the Purchasers hands; and being extended, the Father devised the extent to a younger son, there being more levied by the extent according to the true value than the penalty of the Statute. The purchaser was plaintiff against the devisee, and the Lord Chancellor enclined to relieve him. 10 Febr. 1 Jacobi.

Thomas Colwel was served with process to testify on the plaintiffs behalf, and had formerly been of Council or Solicitor for the defendant in the matter in variance; Therefore ordered that *Colwel* shall not be examined upon any Interrogatories which shall compel him to discover any matter which came to his knowledge as a Solicitor or as of a Council in this Case: But for any other matter it shall be lawful for the plaintiff to examine him. *Creed* plaintiff, *Trap's* and others defendants. Anno 21 Eliz.

The matter of the plaintiffs bill being but for an obligation of eight pounds, it is dismissed. *Knight* plaintiff, *Smith* defendant, Anno 21 Eliz.

The defendant appeared upon an Attachment of privilege at the plaintiffs Suit, and hath answered the Declaration, whereupon the plaintiff hath demurred; therefore the defendant is respited

A Councillor or Solicitor not to be examined upon any matter which came to his knowledge as Solicitor or Councillor.

An Obligation of 8.l. sued, dismissed.

The plaintiff demurred on the defendants answer.

*One appearing
on a Commission
of Rebellion is
committed.*

*A vidimus or
inspeximus of
two ancient
Deeds granted,
but with great
caution.*

*A Scire facias
granted to shew
cause why a
consultation
should not be
granted.*

spired to depart until *Craft. Trin. next. Carewe*
one of the Masters of this Court plaintiff, *Bur-*
sand Defendant. Anno 21 Eliz.

The Defendant appeared upon a Commission of Rebellion: It is ordered that he be committed to the Fleet. *Cayie* plaintiff, *Corrigan* defendant, *Anno 21 Eliz.*

They exhibited their petition to the Lord Chancellour to have a *Vidimus* or *Inspeximus* of two ancient Deeds granted to their Ancestors under the hand and privy Signet of King *Edward* the fourth, whereupon the Lord Chancellour sent for the Queens Attorney, who could alledge no cause to the contrary, therupon it was ordered that Doctor *Carewe* and Doctor *Forth* two of the Masters of this Court should go to the Tower and there compare the Kings hand in those Deeds, and the privy Signet in other writings of the same time; And if they agree, then a *Vidimus* or *Inspeximus* shall be granted. *William Paston mil. & al. supplicantes. Anno 21 Eliz.*

Merrick Clerk plaintiff, being Vicar of *Mansel-lacy* in Comit. *H. ref.* sued the Defendant in the Ecclesiastical Court for Tyth-wood and the defendant got a prohibition out of this Court for stay of his proceedings, upon suggestions that the land were holden of the Queens Majesty in Capite. Therefore a *Scire facias* according to the form and course of the Register was desired by the Plaintiffs Council, & granted returnable *Octab. Mich.* to shew cause wherefore a consultation should not be granted. *Merrick* Clerk plaintiff, *wolfe* Defendant. *Anno 21 Eliz.*

This Suit is to be relieved of a Bond of 200 Marks made for payment of 100 Marks delivered as an escrow, to be delivered as his deed, if the 100 Marks for which Bond was made, was paid. The defendant demurred, because the plaintiff may have a remedy by Law, if the Bond were delivered upon such condition; but because the witnesses that could testify the delivery of it, are dead; Therefore the defendant is ordered to make a full answer. Fox plaintiff, Wilcocks defendant. An. 21 El.

Ordered to make a full answer upon a demurrer.

The plaintiff had a *levari fa.* upon a Judgment of a Recognisance against the defendant to the Sheriff of Leicester-shire, upon which Writ the Sheriff returned that he had taken goods of the defendants. Thereupon the plaintiff had another Writ to make sale of the goods, which Writ the said Sheriff neither returned, nor paid the money to the plaintiff: Therefore a *Distringas* was awarded to the new Sheriff to distress, the old Sheriff to bring in the money by him levied. Helbrooke plaintiff, Beaumont defendant, An. 21 El.

A *distringas* against the old Sheriff to bring in money levied.

The plaintiffs desired to have a Bond made to them by the defendant, to save them harmless against the defendants three daughters concerning certain Legacies bequeathed by the Testator to the defendants said three daughters, which the plaintiffs have paid to the defendant. And because the defendant at the day of hearing appeared not, therefore referred to two Masters of this Court, to see whether it be proved that the plaintiffs paid the defendant the legacies or no, to the use of his Daughters; which if they did, then a Decree shall be made

An order to make Bonds to save harmless touching Legacies.

for

for the plaintiffs, that they, their executors or administrators shall be saved harmless against his said three daughters, their executors or administrators, for so much as the defendant had received, Byard & al. plaintiffs, Byard defendant. *An. 21. El.*

Lands recovered by assize, The assize reversed by error, and thereupon damages the land again recovered, & suit to be relieved for the damages.

The plaintiff recovered certain lands in *Paddington* by assize against the Defendant in *19 Eliz.* and continued possession untill by a writ of Error the same was reversed in *20 Eliz.* for want of a Warrant of Attorney. And thereupon damages to the value of *78 l. 14. sh.* for the mean profits was awarded to the now defendant then plaintiff in the said Writ of Error. And since that time the now plaintiff upon a new entry hath again recovered by a new assize against the defendant upon the same title: And therefore the plaintiff prayeth relief here to stay the execution for the said *78 l. 14. sh.* damage, for that (as he alledged) he had no remedy by Law to recover any thing in recompence of the said mean profits so recovered upon the reversal of the Writ of Error: The Court for rareness of the Case doth referre the consideration thereof to Master Justice *Southcote*, and Master Justice *Gawdie*, and they to inform the Court of their opinions, *Francis* plaintiff, *Burnel* defendant. *An. 21 El.*

The defendant being not of safe memory to answer without oath, or by his prochan amie,

The defendant by order of Court was to make a perfect answer upon oath, if he were of safe memory; if he were not without oath: The defendant made answer without oath by this prochan amie, and moved by Master *Egerton* that he was not in sufficient case to make answer upon oath: Therefore ordered that Master

Waldron one of the Masters of this Court shall
to him to see if he be in sufficient state to
make answer upon oath or no, and so certifie
the Court. *Ostey* plaintiff, *Morgan* defendant.
An. 21. El.

The defendant made oath a Subpoena was
served on his door by a man unknown, having
no plaintiff indorsed on the backside: But it was
served unto him by one *John Atwells* that it
was at the suit of *Robert Atwells* his Brother,
and no Bill nor order: Therefore costs awarded
against the plaintiff. *Atwells* plaintiff, *Claxton*
defendant. *An. 21 El.*

*Costs for want
of a Bill.*

Forasmuch as the said Defendant had com-
mission to take his Wifes answer in the Coun-
ty, and had not caused the same to be return-
ed; therefore an Attachment against the De-
fendants. *Hay* plaintiff, *Averie* and his wife De-
fendants. *An. 21 El.*

*Attachment for
not returning
answer upon a
Commission.*

For that it appeared, the Lands in question
were demised and letten by Coppy of Court-
roll by the space of sixty years and upwards as
Coppysold lands of the Mannor of *Wpton* bil-
l in *Cam. Devon*. And that the plaintiff had
Coppy thereof granted unto him by the Lord
of the Mannor for his life: Therefore decreed
in the plaintiff. *Wrayford* plaintiff, *Carewe* et
al defendant. *An. 21 El.*

*A title of cop-
pyhold land de-
creed in Chan-
cery.*

The defendant appeared upon an Attachment
sworn upon Oath that a Subpoena was served
on him for his not appearance, and now
would excuse himself that he was ridden forth
two dayes before the Subpoena was served; But
that it is confessed by Affidavit made, the
defendant is to be examined upon Interrogato-
ries.

*For not appear-
ance upon a Sub-
poena, served
an Attachment;
&c.*

ries, and as it shall fall out upon examination, order shall be taken therein. *Stoddard plainiff*
Holland defendant *At. 2 v. El.*

Common of pasture, Estovers, Common of pasture, Herbage and Pannage and other profits appender demanded by the plaintiffs by two several Bills in Abberbury wood in Com. Salop. And in other lands mentioned in the Bill, Forasmuch as the same seem more meet to be determined by the Common Law; Therefore ordered for the

A witness served with a Subpoena, not coming, an Attachment is granted.

William Franckland made oath that William Falwood confessed unto him that he was served with a Subpoena, to testify in the Court on the plaintiffs behalf, and hath not so done; Therefore an Attachment against the said Falwood Franckland plaintiff, Grunsich defendant. All

A Subpoena
banged on the
door of the house
supposed to be
the defendant's
lodged not ap-
pearing an At-
tachment.

William Cooke made oath, that he did see on Nicholas Stone hang a Subpoena upon the Stone done of the house in St. Clements parish where the defendant did lie, as one of his servants said who hath not appeared; Therefore an Adjournment. Stone plaintiff, L'Eveson defendant, 21 El.

Forasmuch as *John Barodai* made oath, that
the matter of the Bill doth chiefly concern the

said Isabet who is above seventy years old, and One of the chief
 all the defendants dwell in Cumberland: There- of the Defen-
 is a Commission is awarded to take all their dants being se-
 answers in the Country. Jackson plaintiff, I- venty years old,
 said Barrodel widow and others defendants. An. and the rest
 dwelling in
 Whereas by an order of the 20 of June, the Cumberland,
 plaintiffs further proceeding was stayed in a a commission is
 Writ of Error brought by the plaintiff against granted.
 the defendant to reverse a Judgement given by A Writ of Error
 the Mayor and Jurats of the Town of Rie brought to re-
 defendant in an Action of Debt of 200 verse a Judge-
 marks, for that the Court was then informed ment given in
 the defendants behalf, that the Writ of Er- Rie, being a
 would not lie into any of the Cinque-ports, member of the
 The one of the said Town of Rie is a member. Cinque-ports,
 and a *Superfedeas* was then also awarded for and allowed, be-
 discharge of an Attachment awarded against cause Rie was
 the said mayor and Jurats; for that after an ali. incorporated by
 plures upon the said Writ of Error to them letters patents
 awarded, they refused not the same Writ of in K. Ed. 2^{os}
 Error, as by the same order appeareth. Foras- time.
 much as this Court was this present day in-
 named by Master Serjeant *Fenner*, that albeit,
 Writ of Error will lie to reverse any Judge-
 ment given by the said Mayor and Jurates of
 for that they have cognisance of Plea by
 letters patents of King *Edward* the fourth; It
 therefore ordered that Fryday next be given
 the said defendant to shew cause wherefore the
 Writ of Error should not be allowed, and
 the further process continued thereupon. Mer-
 Plaintiff, *Telkin* Defendant. Anno 21

*An attachment
 for not perform-
 ing of an order.*

an Order made in this Court between the parties the first of June last, who hath not performed the same: Therefore an Attachment *Haynes* plaintiff, *Filmingham & uxor* defendant. *An. 21 El.*

The Defendant demurres, pretending to be a feme covert, but the contrary alleged, she is ordered to answer, that if it prove otherwise the proceedings to be void.

The defendant demurred upon the plaintiffs Bill, for that she supposed she was a Feme covert, and her husband living in Barbary. But for that it was informed on the plaintiffs behalf that the defendants Husband was burnt in Ship in Barbary two years since, and she understanding thereof, hath since dealt as a Feme sole; Therefore ordered the defendant to answer. And if it shall hereafter appear good proof to the Court that the Husband is alive, then it is ordered, by assent all proceedings shall be void. *Wright & uxor* plaintiffs *Margaret Raph* defendant. *An. 21 El.*

Process ad audiendum Judicium served on the Defendants door and holden good.

Affidavit was made that process was hanging on the defendants door by the plaintiffs wife to hear judgement, and was thought by the Court to be a good service: And the Court thereupon proceeded to hearing, *Cros*s plaintiff, *Upton* defendant. *An. 21 El.*

An Injunction against one that would take advantage of a lease upon a fraudulent trick.

The plaintiffs Bill was, for that by his lease his rent was reserved to be paid at the two usual Feasts in the year, or within one month after; And if it shall happen the said rent to be behind after any of the said dayes, term times wherein it ought to be paid, or by space of fourteen dayes, then it shall be law for the lessor, his Heirs or Assignes to receive which rent hath most commonly before been paid at the Feast dayes, or within fourteen days after, until of late the Defendant having

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chased the reversion (whereof the plaintiff had no notice) demanded the rent on the last instant of the fourteen days after the moneth, seeking thereby to avoid the plaintiffs lease, although the rent was tendered at the fourteen dayes end next after the Feast, and was also within a very short time after tendered to the Defendant himself: Therefore an Injunction is awarded against the said defendant. *Gardiner plaintiff equal defendant. Anno 21 Eliz.*

The Bill was, that his testator bought and paid for certain commodities, which afterwards came to the defendants hands, and they converted the same to their own use; The defendants answered no other in effect, but that they nor either of them are guilty of the matter laid to their charge: Ordered the defendant shall make a better answer. *Martin Plaintiff, Hampton & Rogers Defendants. 21 Eliz.*

The Defendants made Oath, that they were served with a *Subpœna* to appear in this Court by the plaintiff. But upon the *Subpœna* it doth not appear at whose suit; Therefore the said *Sidall* shall pay to the Defendant good costs. *Sidall plaintiff, Darlaston and Tylor Defendants. 21 Eliz.*

John ap Rice ap Morgan made Oath, as well that all the said parties are inhabiting and dwelling within the jurisdiction of her Majesties Commissioners in the Marches of *Wales*, as also that the matter therein contained is for no title of land, but for an Oblation of 30 l. Therefore dismissed, and the party left to take his remedy before the said Commissioners and council of *Wales*. *Griffith plaintiff, Owen*
K *Joannes*

The Bill is for Trover and conversion of goods the defendant answers not guilty, and ordered to make better answer.

He at whose suit the Subpœna is, doth not appear, plaintiff ordered to pay costs.

Jurisdiction of Wales allowed.

*Choyce cases in Chancery.**Joannis & Gibbe defendants, Anno 21 Eliz.*

The defendant by his Councel made request to be dismissed from the plaintiffs Bill, for that it contained the same matter heretofore dismissed out of the Court of Requests where the plaintiff exhibited the like Bill. Ordered by this Court, that the Defendant shall put in the same by way of answer upon Oath, and demand Judgement thereupon, whether this Court would any further plea thereupon, *Calcoc* plaintiff, *Tarbury* defendant. *Anno 21 Eliz.*

Forasmuch as this Court was informed, that the defendant hath commenced suit in her Majesties Bench against the plaintiff upon an action of debt, supposing himself to be damnified to the value of 100. l. whereby her Highness is hindered of her fine, which should have been paid upon the Original, & ought to have been pursued out of this Court: Therefore an Injunction is awarded against the defendant, *Nokes & uxor* plaintiffs, *Shereshawe* defend. *Anno 21 Eliz.*

Hopson plaintiff, *Chase* defendant.*Morgan & uxor* plaintiffs.*Weller & uxor* plaintiffs.*Skeiron* plaintiff, *with* defendant.*Fisher* plaintiff, *Bowes* defendant.

Anno
21 Eliz.

A like Injunction granted for not paying the Queens fine, where the action was trespass to the damage of 1000 Marks, And for breach of the said Injunction the defendant was committed to the prison of the Fleet. And now upon motion he is ready to pay the fine, upon payment wherof he is discharged of his imprisonment. *Blagrove* plaintiff, *Wotton* defendant *Anno 21 Eliz.*

The

his suit dismissed out of the Court of Requests, therefore motion is made to be dismissed hence, and ordered to put the same in by answer upon Oath.

Injunction to stay proceedings for non-payment of the Queens fine.

Consim.

Consim.

The defendant got costs for want of a Bill, and after the plaintiff shewed forth a commandment from the Council of the Marches of Wales at the defendants suite, procured after the serving of the *Subpœna*, to shew cause why he should nor stay his proceeding in this Court, whereupon he staid the putting in of his Bill. Therefore discharged of the costs. *Brown* plaintiff, *Benion* Defendant. *Anno 21 Eliz.*

Forasmuch as the Commissary of the University of *Oxford* hath certified under the seal of the said University, that the said *Gibbard*, one of the Defendants, is a Master of Arts and Bachelior of Divinity within the said University: And that by the confirmation of our Sovereign Lady the Queens Majesty, and by the grant and confirmation of her Highness Noble Governours, none of the said University, which the said Commissary shall certifie to be a necessary member of the same, shall be compelled to answer to any suit or action whatsoever out of the same University, except it be for felony, mayme, or free-hold, as by the same Certificate more at large appeareth. And for that also it seemeth unto this Court, that the matter wherewith the said *Nicholas Gibbard* is charged, is for a supposed going about to get a Copy of a Court Roll out of the hands of the said *Margaret Pawling*, another of the said Defendants: It is ordered that the said *Gibbard* be dismissed, and the plaintiffs referred to take their remedy before the Chancellor of *Oxford*, Vice-Chancellor or Commissary of the same University. *Pawlet* plaintiff, *Humbry* *Sacra Theolog.* Professor, *Gibbard* and *Pawling*

For want of a Bill costs is gotten and discharged for that by the defendants means he was stayed to proceed by authority of the Council of Wales.

Jurisdiction of *Oxford* allowed.

Procedendo to the Mayor of London, and nothing done, the Lord Chancellor writ his letters to give judgment, or shew cause.

Subpoena returnable the last day of the term, answered three dayes before the term, Attachment gotten and discharged.

A Subpoena served, but no Writ Libel or note left, yet upon oath, costs is awarded for want of a Bill.

Oath made he saw a Subpoena served.

Attachment for

widow defendant. *Anno 21 Eliz.*

The plaintiff procured a *Procedendo ad iudicium* to the Lord Major of the City of London, to proceed to Judgement upon a verdict given in the Sheriffs Court in London, and an alias and plures thereupon. And yet the plaintiff can get no Judgement thereupon, nor the Writs returned; wherefore the Lord Chancellor vouchsafed to write his Letters to the Lord Mayor, either to give judgement or to certify why he doth not. *Hanton* plaintiff, *Wentworth* defendant. *Anno 21 Eliz.*

The defendant was served with a Subpoena, returnable the very last day of the Term, then appearing took a Copy of the Bill, and put in his answer three dayes before the next Term, and yet the plaintiff procured an Attachment against the defendant, for that his answer was not put in in time: Ordered to be discharged. *Fox* plaintiff, *Wilcocks* defendant. *Anno 21 Eliz.*

The defendant made Oath, that he was served with a Subpoena by *Thomas Rock* in the name of the plaintiff, and at his suite as he affirmed, but would neither deliver the Writ or note of appearance, but told him his day to appear, was the first day of the Term, and upon his appearance no Bill is in Court: Therefore costs is granted against the plaintiff, *Parsons* plaintiff *Uford* Defendant. *Anno 21, 22 Eliz.*

John Musgrave maketh Oath, that he saw a Subpoena served on the defendant *ad audiendum iudicium*, about a fortnight past. *Baynow* plaintiff, *Gorgane* Defendant. *Anno 21, 22 Eliz.*

An Attachment is awarded against the Defendant

Choyce causes in Chancery.

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endant for proceeding in the Court of the Breach of an
Mannor of Bensted, contrary to the order of this order.
Court. Billing plaintiff, Pate and others Defen-
dants. Anno 21 & 22 Eliz.

Franklin Plaintife, Watkins Defendant, An Consim.
Attachment granted against the Defendant for
breach of an Order of this Court Anno 21
& 22 Eliz.

Stodard plaintiff. Holland defendant. Anno
Couper plaintiff, Woodward defendant. } 22 Consim.
Eliz.

A Subpœna was awarded out of this Court
to answer a Bill of perjury committed by the
defendant Goze, in swearing for the impotency
of the other Defendant. whereas he was not a- A Bill of per-
bove fifty years old, and able to travel. Griffith jury.
plaintif, ap Jenking & Goze Defendant. Anno
21, 22 Eliz.

The defendant was dismissed for want of a Costs against
bill, and fourty shillings given him, whereupon the Clerk for
he bespake the Subpœna for costs, and Robert mistaking the
Bailes Clerk made the Subpœna ad comparend, Subpœna.
which being served, the other appeared and got
costs, both which costs were discharged, and or-
dered that the plaintiffs may have a Subpœna a-
gainst the said Clerk Robert Burtles for the
costs. Fairbank Plaintiff. Domina Metham de-
fendant. Ann 21, & 22 Eliz.

An Attachment was awarded against the de- The defendant
fendant, upon oath, he abused the Plaintiff in examined upon
serving a Subpœna upon him, the defendant ap- Interrogatories
pearing gratis to answer what could be objected touching abuse
against him touching the contempt; whereupon of the plaintiff
in serving
Process.

it was ordered by the Court, that the defendant should be examined upon Interrogatories before his departure, *Segrave* plaintiff, *Norton* defendant, *An. 21. 22. El.*

To be relieved or discharged for legacies paid to the defendants

The Bill, was for that the plaintiff being Executor to the defendants Father, paid the defendants Legacies, for which the plaintiff desired the defendant might give him a release or other discharge depending, which suit the defendant sued the plaintiff for the same Legacies in the Spiritual Court; Therefore an Injunction. *More* plaintiff, *More* defendant. *Anno 21. 22. Eliz.*

A suit against a Bayliff of a liberty for not returning a process and dismissed.

The heir sued to make a lease promised by his ancestors, for which he took fine.

The Bill was, for that the defendant being Bayliff of the Liberty of *Wenlock*, denied to allow an essoigne unto the plaintiff, and to return a Writ of Error and other process, yet dismissed. *Sharpe* plaintiff, *More* defendant, *Anno 21. 22. Eliz.*

The Bill shews, the plaintiff paid to the defendants Brother, whose heir he is, a sum of money; for a fine of a Lease to be made unto him of certain lands. The brother died before the Lease made, and the land descended to the defendant: And the plaintiff exhibited his Bill against the defendant, either to have the Lease made unto him, or to have his money repaid, which he paid for a fine; which the Court refused, but ordered the defendant should directly answer and stay proceedings at Law until licence of this Court be had; But afterwards ordered, for that the defendant came to the lands by the remainder, and not by descent, and the promise made fifteen years before, therefore dismissed. *Keene* alias *Mogg* plaintiff, *Merre* defendant,

endant. Anno 21, 22 Eliz.

The defendant had a Commission to take his answer in the Countrey, but answered not perfectly, but said he could not answer without sight of Evidences in Com. Nottingham, farre distant from *D*ist-shire where he was: Thereupon an Attachment and Proclamation issued: And because the defendant before the return of the Attachment put in a perfect answer, and was sworn thereto in the Countrey before Master *Walrond* one of the Masters of this Court; Therefore the said Process of contempt were discharged, paying the ordinary charges of the same, and 2 sh. 6. d. to the Warden of the Fleet. *Trussel & al.* plaintiffs, *Willoughby Miles* defendant. Anno 21, & 22 Eliz.

Marbut plaintiff, *Kempster* defendant. The Bill being but for six pounds in money, and no title of Land; Therefore it is dismissed. Anno 21, & 22 Eliz.

A Bill for 6 l. dismissed.

The Mayor of *Totnes* certified into this Court under his common Seal, that the defendant made oath before him that he was impotent and not able to travel: Therefore a Commission. *Wotton* plaintiff, *Luscombe* defendant. Anno 21, & 22 Eliz.

Affidavit made of the defendant's impotency. A Commission is granted.

Vpon the Certificate of the Mayor of *Exeter*, of an Oath taken before him for the serving a Subpœna, and no Bill found in Court, therefore an Attachment is awarded. *Preston* plaintiff, and *Smith & al.* Defendants. Anno 21, 22 Eliz.

Costs for want of a Bill.

The defendant made oath he received a Billet of paper of *John Barker* his brother, who likewise deposeth the same was delivered unto him

Consim.

by the plaintiff, and no Bill in Court : Therefore costs is awarded to the Defendant. *Cook* plaintiff, *Barker* Defendant. Anno 21, 22 Eliz.

Jurisdiction of Wales allowed.

George Eliot made oath, that all the parties are inhabitants within the Jurisdiction of her Majesties Commission of the Marches of *Wales*, and that the matter of the Bill is for no title of land : Therefore it is dismissed. *Morgan* plaintiff, *Bethel* defendant. Anno 21, 22 Eliz.

Consim.

Philips and others Plaintiffs, and *Powel* Defendant. Upon oath made that the defendants are inhabiting within the Jurisdiction of the Marches of *Wales*, and that the Bill was not for title of Lands, a dismissal is ordered. Anno 21 & 22 Eliz.

The Bill is for that money paid upon a Bond, & the Bond is refused to be delivered.

The matter of the Bill against the said *Orrell* and *Barker* is no other, but that the plaintiff by the perswasion and under-dealing of the said *Thomas Orrell* and *Edward Barker*, is kept from an Obligation of 100 l. which he made to the said *John Barker* for payment of 50 l. which 50 l. is paid, and the said *John Barker* putteth the said Bond of 100 l. in suite: Therefore dismissed against *Orrel* and *Barker* Defendants, but after it was retained. *Cook* Plaintiff *Orwell* and *Barker* Defendants. Anno 21 & 22 Eliz.

Coppyhold lands which are ancient demesne lands pleadable here, yet upon view of customary book dismissed.

The Bill prayeth relief of coppyhold lands, parcels of the Mannor of *Woodstock*, for which he had licence of the Steward of the Mannor to fine in this Court. The defendant did demurre because the lands are ancient demesne, &c. But ordered to answer, yet after the view of the written customes, dismissed. *Wilkins* Plaintiff, *Gregory*

defendant. 21. 22. El.

The matter was for an apportionment of rent ten shillings per annum: And the smallness of the matter is dismissed, *Knighton* plaintiff *Allen* and *Thorogood* defendants, *An. 21. 22. El.*

The plaintiff obtained several Prohibitions upon several suggestions exhibited to the late Lord Keeper, which suggestions were sufficiently proved by examination of witnesses in this Court; Therefore it is ordered that no consultation be granted without the Lord Chancellor first made acquainted therewith, and the plaintiffs Council heard. But afterwards the prohibition being granted for that the lands are holden of her Majesty, as of her Duchy of Cornwall, a day is given to shew cause why a consultation shall not be granted, *Moyhoe* alias *Helrae* & al. plaintiffs, *Bathyn* Vicar of *Loftwithall* defendants. *An. 21. 22. El.*

One *Benn* being produced to be examined as a witness refused to be examined, whereupon an attachment was granted against him, and he appeared and shewed that the Articles concern lease of land whereof the said *Benn* hath the reversion, and therefore discharged of the Attachment. *Livers* wid. & *Orlands* plaintiffs, *Brind* & *Brandon* Defendants, *Anno 21. & 22.*

The plaintiff appeared in Court according to a Recognisance by him and other sureties knowledge upon the suing out of an *Audita Querela* against the defendant, and retained *Matter* to be his Attorney for speedy prosecution thereof according to the ordinary course of the Court in that behalf, *Goodwin* plaintiff, *Good-*

Suit for apportionment of rent is dismissed.

Prohibition granted upon surmise made to the late lord Keeper, which surmise was after proved by witnesses, and therefore ordered no consultation be granted.

A witness refused to be examined concerning a lease, the reversion being in himself, and discharged of Attachment.

Appearance by Audira Querela.

*The Defendant
disclaiming, ex-
amined as a
witness.*

Goodwin defendant An 21. 22. El.

A Commission went forth to examine witnesses, and the defendant produced four witnesses which were named defendants, but had disclaimed, And yet the Commissioners refused to examine them, and a new Commission was awarded to examine the said persons. *Oke plaintiff, Pridieux defendant, Anno 21. 22. Eliz.*

*Priority of suit
in Chancery stays
a suit in the Spi-
ritual Court.*

The plaintiffs exhibited their Bill into the Court to be discharged of payment of Legacies in regard the defendant had sued in the Spiritual Court for the same Legacies; Therefore day is given to the defendant to shew cause why the suit in the Spiritual Court should not be stayed. *Parr & uxor plaintiffs, Tipladie et uxores defendants, 21. & 22. El.*

*Defendant of non
safe memory,*

Alexander Wood maketh oath, that the defendant hath not at this present, nor almost these two years past hath had his perfect senses, by reason whereof he is not able to answer the Bill. *Builer plaintiff, Jennings defendant, Anno 21. 22. El.*

*The Defendant
senseless and
dumb, no At-
tachment, yet
after recovery
must answer.*

The defendant being both senseless and dumb, ordered that no Attachment shall go out against him. But after upon information that he is come to his senses, a Commission is awarded to some discreet Commissioners to take his answer. *Altham plaintiff, Smith defendant, Anno 21. 22. El.*

*Suit after judg-
ment at law and
outlawry, there-
upon dismissed.*

The plaintiff after Judgement at the Common Law and Outlawry thereupon, seeketh relief in this Court, but dismissed, and yet after retained, *Owen plaintiff, James Wid defendant, Anno. 21. & 22. El.*

The defendant made oath he was served with Costs for want of a Subpoena to appear in this Court, but hath care of a Bill.

And now upon his appearance no Bill in Court, therefore costs. *Domina Metham* plaintiff, *Fairbanck* defendant. *Anno* 21 22.

For that it appears by the Bill, that the matter is for money under ten pounds value, and Wales allowed, also the defendant made oath that both parties and under 10 li. well within the Marches of Wales, therefore value. dismissed to take their remedy there.

Eslicourt plaintiff.

} *An* 21. 22. *Eliz.*

Tanner defendant.

John Sperhawke made oath for delivery of a Subpoena to the wife of the defendant at his house, who had not appeared, therefore an Attachment is granted. *Pilgrime* plaintiff. Read defendant. *An* 21. 22. *El.*

The plaintiff seeketh for relief touching several rent charges of the said *Ralph, Robert and Thomas*, whereunto certain lands as well of the plaintiffs as of the said *Edwards* the other defendants are chargeable; for that the said three defendants charged the land of the plaintiff only therewith; And ordered, because the plaintiff is troubled for the rent of the said *Thomas*, by distress, and he is beyond the seas, and will not answer, that an Injunction be awarded against *John Dolman* plaintiff, *Edward Vavasor, Ralph Vavasor, Robert Vavasor and Thomas Vavasor* defendants. *An* 22. *El.*

The defendant had of the plaintiff certain money

Coppyhold sold
which cannot be
enjoyed, there-
fore the defen-
dant is ordered
to shew cause
why he should
not repay the
money received.

money for the reversion of the coppyhold which cannot be enjoyed according to the said agreement : Therefore ordered that a Subpoena be awarded against the defendant, to shew cause wherefore he should not repay to the plaintiff his money by him received in consideration of the said grant.

Pickton plaintiff,
Lidcote & al defendants. } Anno 21. El.

The plaintiff
shall examine no
witnesses before
the defendant
have answered.

The defendants were never served with process, and yet the plaintiff served divers witnesses with process to examine them. But ordered that no witnesses shall be examined until the defendant shall be called process, and have answered according to the ordinary course of the Court. Epiphanus Sarum, plaintiff, Hinde & Hinde defendants, Anno 22 El.

Attachment a-
gainst him that
makes a rescue
upon Commissi-
on of rebellion.

Divers Commissioners in a Commission of Rebellion have returned upon the same, that one Ellis made a rescue upon the execution thereof; Therefore an Attachment is awarded against the said Ellis. Butler & al, plaintiffs, Isack wild defendants, An. 22 El.

The suite is for a promise supposed by the plaintiff to be made to him by the defendant, to yeild up and surrender a Lease of a pasture and certain riches upon the payment of 100, Mark by the plaintiff to the defendant; and dismissed upon hearing, as more meet to be decided at the Common Law than in this Court. Green plaintiff, Bowker defendant, Anno 22 El.

Confi-

Sutton plaintiff, Eringto defendant, a suite upon a promise, and twelve pence accepted

consideration, referred to the Common Law An.
22 El.

The plaintiff after the defendants answer put in, was excommunicate, notwithstanding the plaintiff replied and served the defendant to rejoin, who by way of rejoinder pleaded the excommunication, and shewed a Certificate thereof; And yet the plaintiff proceeded and took out a Commission to examine witnesses. And ordered that all proceedings by replication and Commission since the Excommunication, is void, and shall be suppressed, and no further proceedings until the plaintiff bring and shew forth in this Court letters of Absolution.

Hobbes ——— plaintiff.

Hobbes & Churchhill defend.

} An. 22 El.

The plaintiff procured an Attachment against the defendants, for that they refused to be examined before the Town-Clerk of London, being served with a Subpoena for that purpose. The matter in question whereupon they should be examined depending not in London, but in her Majesties Bench, which kind of examination the Court holdeth to be disorderly, and therefore discharged the Attachment. Price plaintiff. Finch, Holland and Parkhouse defendants An. 22 El.

The defendant knoweth no such Thomas as is named for the plaintiff, nor the town where he is named to be dwelling, and the same defendant and his two brethren were likewise served at the sute of one Thomas Vaughan, whereas none

The plaintiff is excommunicate after answer, & cannot proceed until absolution.

Subpoena to examine witnesses before the Town-Clerk of London for matters depending at Common law disliked by the Court.

A party served with process in the name of one unknown, for vexation ordered.

none of them knew any such man, but suppose the process was procured against them for vexation by *Matthew ap Richard* and *Charles ap Richard*, who are now in Town; Therefore ordered that the Warden of the Fleet shall warn the parties to be in Court to morrow morning to answer the premises, and then further order shall be taken. *Thomas Vaughan* plaintiff, *William* defendant. An. 22. El.

Confli.

Ap Richard served a Subpœna in the plaintiff's name, where there is no such party; therefore an Attachment against *ap Richard Jones* plaintiff, *Wyme* defendant. An. 22. El.

Jurisdiction of
the Exchequer
over-ruled.

The Bill was to be relieved upon the extremity of a Bond of 100 l. for not payment of 25 l. at the very instant. The Defendant demurred because he is servant to the Lord Treasurer, and ought to be privileged in the Exchequer; which cause of demurrer this Court alloweth, not for that the defendant can have no such privilege unless the plaintiff might have remedy in the said Court of Exchequer. *Lewys* plaintiff, *Fandefsey* defendant. An. 22. El.

Suit for interest of Common
and profits
apprender dismissed.

The plaintiff's Bill is for certain wayes, interests of common and profits apprender, and also for taking of Hawkes, cutting of Woods, and taking of distresses. The interest of common and profits of apprender upon hearing thereof were dismissed. The wayes referred to indifferent Commissioners. And a day given to shew cause wherefore the matter of distresses, taking of Hawkes, and cutting of Woods should not be dismissed. The Warden of *All Souls Colledge* in *Oxford* plaintiff, *Leighton, Maude* and others defendants. An. 22. El.

The

The Defendants demurred for that they are Executors, and therefore not chargeable in Law to account for goods received by the Testator: ordered to answer. *Beecher* and others plain-
tiff. *H. Ashwood* defendant. *Anno 22 El.*

Because the Bill was for certain frivolous matters grown within the Jurisdiction of her Majesty's Commission of the North parts, where both parties dwell, and where also the matters are depending: Therefore ordered to be dismissed, if good cause be not shewed the contrary. *Vavasor* plaintiff, *Fowbery* defendant. *An. 23. 24. El.*

The suit was, for that the Defendant *Needham* being Steward and Farmer to her Majesty of the hundred of *Bradford* in the County of *Salop*; he said *Needham* doth set unreasonable fines of amercement for not appearance, whereas was never used to be above six pence, and dismissed as unmeet for this Court, and the plaintiff left to seek his remedy in the Exchequer. *Needham* & al. defendants. *An. 23. 24. El.*

The Bill was, to be relieved upon a Bond of *Wales*. the defendant demurred, for that all the Defendants dwell within the Jurisdiction of the Marches of *Wales*: Albeit the Council in the Marches cannot award an Injunction for stay of defend. proceedings in the Common Pleas; therefore ordered, if the Defendant will agree to stay proceeding at Law, it shall be dismissed, otherwise it is to be retained, and the defendant must answer. *Harris* & others plaintiffs, with defendant. *An. 23. 24. El.*

Executor charged with goods received by the Testator.

Jurisdiction of North Wales allowed.

The Bill being to be relieved for amercements is dismissed.

Jurisdiction of Wales disallowed.

Whereas the said defendant coming up upon
At-

*Jurisdiction of
Chancery is
maintained.*

Attachment of privilege at the suit of the plaintiff, being one of the Clerks of Master D. Carew one of the Masters of this Court: And being this day according to a former order in the behalf made, brought into this Court by the Warden of the Fleets man (to put in such bail as by the ancient privilege of the Court is required) alledged by Master Sergeant Anderton and Master Braughton being of his Council, that wherein her Majesties Bench and other Courts at Common Law, the Bayl or main-persons by bringing the body of the party condemned are excused; the now plaintiff doth not only require four special mainpernours of the defendant, where two onely might Suffice, but would also have them bound by recognizance, simply to pay summes of money as he shall recover in this suit, without this disjunctive clause, or to bring in the body of the Defendant; and therefore desired the plaintiff might accept of main-pernours onely to be bound, either to pay such summes of money as shall be recovered in this suit against the defendant, or else to yield the defendants body to prison. Nevertheless for as much as they were shewed forth divers and sundry ancient Presidents of Bailes taken in like case as aforesaid, as well of old time, as of late time, whereby it generally appeared that four special sureties for main-pernours, and the party also are bound to satisfie to the plaintiff both damages and costs to be adjudged, and to appear from day to day, *donec & quousque*, &c. with which presidents the Civil Law (as divers of the Masters of the Court affirmed) doth in that point concur; *vi z.* that the Bail and main-

main-

main-pernours are to pay the money received and not to be excused thereof by the yielding of the body condemned. It is therefore ordered that according to the ancient customs and form, (for the infringing whereof no sufficient matter could be shewed by the defendants counsel) the said defendant shall be forthwith bound himself in 400 lib. and four sufficient main-pernours in 100 l. a piece by Recognizance to the plaintiff, to satisfie unto him both such damages and costs also as shall be adjudged unto him in this suit or action; and to have the body of the defendant in Court; and that he shall appear from day to day, *donec & quousque, &c.* as by the said Bail or Recognizance taken in open Court this present day it may appear. *Jon Archbould plaintiff, William Burrel Defendant. Anno 23, & 24 Eliz.*

A Fine was knowledgeed by the plaintiffs father and one Leonard Atherton deceased, to Robert Atherton and William Griniston with a tender back to the said Leonard Atherton for twenty one yeares, rendering nine pounds rent, which Fine was levied to make good a lease for yeares of five closes, containing about eighty acres; but in the same Fine were more number of Acres contained: And the defendant having procured Letters of Administration of the said Leonard Athertons goods, perceiving the plaintiffs father had more lands near adjoyning to the said five closes, which by the generality of the words of the said Fine, did pass in law by the said Fine, being with a rent and tender, and so not averable to any other uses, brought a *scire facias* upon the said Fine to ex-

A Fine with a tender for years, reserving a rent was charged on more lands than was intended, therefore an Injunction to stay execution.

*Lands assured
for joynture or
marriage never
effected, was
decreed against
the woman.*

ecute the same against the plaintiff; And an Injunction is granted to stay the said *scire facias*. *Rather Plaintiff, Tempest Defendant. Anno 23, 24 Eliz.*

Certain lands were assured to the Defendant *Katherine*, for a joynture upon a marriage intended with one *P. slow*, which marriage was never effected. But the said *Katherine* after married the other defendant, and never claimed the said lands till of late, that the same being come into the hands of divers purchasers now plaintiffs, and the Feoffment made was intended conditionally, (though by fraud made absolute) to be void if the marriage take not effect, upon repayment of 100 *lib.* which was repaid. Therefore decreed for the plaintiffs, if no cause be shewed to the contrary by a day. *Birket and other plaintiffs, Bercy and Katherine his wife Defendants. Anno 23, 24 Eliz.*

Suit for pasturing or common dismissed.

The matter of the Bill was for pasturing or common claimed in the Fenne of *Gosberton*, and because the matter is more meet to be decided by the Common Law; Therefore dismissed. *Barty plaintiff, Shaw Defendant. Anno 23, 24 Eliz.*

A lease for life to one remainder to another, he surmised it is intended to destroy his remainder, ordered to bring the leases into the Court.

The plaintiffs Father being husband to the defendant, devised by his will certain leases to the defendant for her life, the remainder after her death to the plaintiff. And upon surmise the defendant seeks to put away the said leases, and to surrender the same, and take new. It is ordered she shall bring the leases into the Court, to remain in safe custody for preservation both of the plaintiffs and defendants interests. *Garlick plaintiff, Garlick widow defendant. Anno 23, 24 Eliz.*

The matter in variance could not be judicially heard in the Court upon the Bill of revivour exhibited by the plaintiff for the reviving of a former Bill exhibited by one Reynolds deceased, or the plaintiff being assignee of the lease in question could not revive the same. *Cheesebrooke* Plaintiff, *Hastwood & al.* Defendants. *Anno 23. 24. Eliz.*

The suit was to stay a Writ of dower brought by the defendant against the plaintiff, and the cause was, the plaintiffs grandfather was bound to leave the now defendant, then his wife, either 40 l. joynture, or a lease of *Nayland-park*, which he then had for many years enduring. The Grandfather assured the lease of *Nayland Park* accordingly, by reason whereof the Feoffees of this land had a Decree in this Court against the said wife. Therefore a *Subpœna* to the defendants to shew cause why a like Decree shall not now be made for the plaintiff. *Rose* plaintiff, *Reynolds* and *Rose* his wife defendants, *Anno 23. 24. Eliz.*

The Bill charged the Defendant with tearing an Obligation or Bill obligatory. The Defendant, for that it was in truth a Bill of Indenture of Covenants, denied the tearing of any Obligation by his answer. The plaintiff by way of Replication shewed it was an Indenture of Covenants. The Defendant demurred; for that the Plaintiff departed from his Bill, which this Court accounted no departure: Therefore ordered the defendant shall forsake his demurrer, and rejoyne and joyn in Commission, or lose the benefit thereof, and the plaintiff to have a Commission alone. *Passmore* plaintiff, *Ford* defendant.

*Jurisdiction of
Wales not al-
lowed.*

pendant. Anno 23, & 24 Eliz.

Motion was made that the cause might be dismissed into the Marches of *Wales*, for that all the parties dwell there, and onely touching a lease. But for that the matter is here proceeded into issue, and witnesses examined, and the matter ready for hearing; Therefore it is retained. *Hitcham* plaintiff, *Thynne* defendant. Anno 23, & 24 Eliz.

*An Attorney for
the plaintiff ex-
amined for the
defendant.*

One *Colborne* an Attorney at Common Law for the plaintiff, is ordered to be examined, for the defendant, being served with *Subpœna*, refusing to be examined touching the pulling off, or breaking off a Seal from an Indenture, nor any thing concerning his Clyents title, *Havers* plaintiff, *Randoll* Defendant. Anno 23, & 24 Eliz.

*A lease payroll
sued for, is dis-
missed.*

The matter in question being for a lease payroll, pretended to be made to the plaintiff for divers years yet to come of divers lands in the Bill mentioned, is dismissed. *Page* plaintiff, *Spenser & al.* Defendants, Anno 23, 24 Eliz.

*Non-age and
foreign birth
pleaded.*

The matter is touching a lease made by the defendant himself which he would avoid by his non-age, and being born beyond Seas, hard to be proved, and ordered, because the defendant seeks to avoid his own deed, that one *Katherine Throgmorton* (who is like to know of the birth of the Defendant) shall be examined, though after publication *ad informandam conscientiam Judicis*, *Purserie* plaintiff, *Throgmorton* defendant. Anno 23, 24 Eliz.

A pursivant to

Upon Information taken one *Hampton* and *Lane*, two necessary witnesses, do absent themselves

selves so as they cannot be found to be served bring in witnesses that will with Process; therefore a pursivant is granted that will bring him in. *Mashall* plaintiff, *Harris et al.* not be found. defendants. *An. 23. 24. El.*

The plaintiff recovered dower at the Common Law and had judgement and execution. But the Defendant being rich and wilful, would not let her have any benefit thereby; whereupon she set forth her title by Bill in Chancery, and prayed the aid of this Court to have her possession established by Injunction: And upon a Letter written by my Lord Dyer chief Justice of the Common-Pleas and Justice Meade, before whom the tryal was had, craving the Lord Chancellors aid for the plaintiff: He granted an Injunction for her possession. *Bracebridge* widow plaintiff, *Tho: Bracebridge* defen. *An. 23. 24. El.*

The matter of the Bill is concerning the buying of the title of certain lands in Cumberland, being within the Jurisdiction of the Commission of the North, where all the parties dwell, and where the Defendants title was decreed against the Plaintiffs title. And for that the matter of buying of titles is not meet for this Court; And if it were; yet being decreed, this Court thinks not meet to retain the same: Therefore dismissed. *Nelson* plaintiff, *Nelson & Nelson* defendants. *An. 23. 24. El.*

The matter of the Bill being for interest of Common, was upon hearing after witnesses examined on both parts, and both parts being sufficiently able, referred to trial at Law. *Hussy* plaintiff, *Tankerd* and others defendants *An. 23. 24. El.*

Upon hearing the matter, being for tenant-

Injunction granted to settle possession recovered at the Common Law.

Jurisdiction of the North allowed.

Matter of Common dismissed.

the North al-
lowed.

Tenant right
dismissed.

A cause former-
ly dismissed, be-
cause under
value, and is
retained, in re-
gard it is pro-
ceeded to Issue.

Jurisdiction of
Chester not al-
lowed.

Conf.

right demanded by the Plaintiff for which he paid unto *Lathes* one of the defendants 20 l. it is dismissed to the order of her Majesties Commissioners for the North. But *Lathes* ordered to pay back the 20 l. *Walker* plaintiff, *Lathes* and others Defendants, *An. 23. 24. El.*

Whereas by order of the eleventh of *Novem.* last, it was ordered the cause should be dismissed, because the lands in the Bill are under 40 s. per annum: But now upon information that the suit is proceeded into Bill, answer, replication, rejoinder, and examination of witnesses, before any exceptions taken; Therefore retained to be heard here: But after a new motion dismissed. *Hulton* plaintiff, *Lacy* and others defendants. *An. 24. El.*

The Defendants moved by Master *Warberton* to have the cause dismissed into the County Palatine of *Chester*, where the defendants dwell, and the matter riseth: But because the plaintiff is one of the Yeomen of the Guard, & to be necessary here attending; therefore retained. *Kent et uxor* plaintiffs, *Haddock* and *Young* defendants. *An. 24. El.*

Upon motion made to have the cause dismissed into the County Palatine of *Chester* where the parties dwell; Because it appears to this Court, that in this suit having formerly continued against the said defendants, they offered to bring into this Court certain bonds concerning the matter now demanded, and to set down upon their oaths the surplusage of goods remaining in their hands; therefore it is here remained. *Brereton et uxor* plaintiffs, *Done et uxor* defendants. *An. 24. El.*

Upon

Upon Certificate made by the plaintiffs under their common seals that the Defendant being chosen Sheriff of the County of the said City refuseth both the oath that belongs thereunto, and also the execution of the same Office: A special Subpœna was awarded against the Defendant, commanding him either to take upon him the said office, or else to appear immediately, and shew cause to the contrary. The defendant being served with the Subpœna, appeared before the Master of the Rolls, but shewed no such cause as he liked of. And yet did not onely contrary to the commandement of the Master of the Rolls given unto him, nor to depart the town without licence or giving better satisfaction to the Court; but also hath hitherto refused to take upon him the said office: Therefore an Attachment against the Defendant to answer his said contempt. The Bayliffs of Litchfield plaintiffs, Richard Otley Defendant
An. 24. El.

The plaintiff being a copyholder, had the rent due upon the copyhold extended upon a Statute knowned by his Lord, who after sold the freehold to one Dowrish, against whom the defendant after the death of her husband being first Lord brought a writ of dower. And the said Dowrish pleaded, *Ne unques scisse & dower*, an Injunction. whereas he might have pleaded in Barre a Fine levied by the husband, and five years past after his death before the Defendants claime, and so have barred the Defendant, and so the Defendant recovered in the said Writ of Dower, and had the plaintiffs said copyhold lands assigned for her Dower, whereby

the plaintiff is enforced by the Law, because they cannot falsifie the record to be as well subject to the distresses of the tenant in Dower for this rent, as of him that hath the same extended. Therefore, and because the plaintiff cannot plead recovery of dower to avoid the said extent upon the Statute, for that the same writ of Dower might have been barred by pleading the Fine, whereof the Conusee of the Statute may take advantage: Therefore if cause be not shewed, (by such a day) to the contrary, tenant in Dower proceeding by distress and the avowry; is stayed by Injunction. *Quick plaintiff, St. Cleere widow defendant. An. 24. El.*

Contribution of
rent.

The Mannor of *Mouden* in *Suffolk* is chargeable with a rent of thirteen pounds per annum, to *Pepes* one of the Defendants, *Harward* in the name of *Pepes*, upon the Plaintiffs lands (sometimes parcel of the said Mannor) takes a distress, and avowes for the arrearages of the said rent; and in the name, and by the commandment of *Pepes*, whereas the greatest part of the Mannor is in the other Defendants hands; *Pepes* by his answer denies the distresses or avowry to be taken or made by his commandment, whereby it seemes the other defendants do collude to transferr the whole charge of the rent upon the plaintiffs lands; therefore if no sufficient cause be shewed to the contrary (by such a day,) ordered that the proceedings by distress and avowry be stayed by Injunction. *Revee plaintiff, Harward and others defendants. An. 24. El.*

As Excommuni-
capiend. a St.

The plaintiffs were taken by a Writ of Excommuni-
capiend. out of this Court, and in

Choyce cases in Chancery.

153
~~155~~

in prison in the North: And because the same is contrary to the form of proceedings of the Stat. of the 5. El. Therefore a Superfedeas is granted to discharge the said Excom. capiend. and for the enlarging of the plaintiffs, Smith & azor ejus plaintiffs, Ferry & Ferry defendants. An. 24. El.

perfedens is granted, because it is contrary to the form of the Stat.

The plaintiff being taken by an Excommu-
nicatio capiend. a Super. is awarded, because the Writ is made contrary to the Statute out of term, and without return. Bannister and others plaintiffs, Joanes defendant. An. 24. El.

Conf.

The defendants got 40 sh. costs for want of a Bill, and made oath they knew not any such man as the plaintiff is, and that the Subpoena was served on them by one Michael Barrow; Therefore ordered upon the motion of Cordell the defendants Attorney, that a Subpoena be awarded against the said Michael Barrow either to pay the costs, or to direct the defendants to the knowledge of the pretended plaintiff. Burras plaintiff, Bast and others defendants. Anno 24. Eliz.

The plaintiff's unknown, cost awarded against him that served the Subpoena.

The plaintiff arrested the defendant in the Kings Bench, and then served her with a Subpoena out of this Court to be examined before the Town-Clerk of London, to discover matter against her self in the same cause; & because she was not examined, got an attachment against her, and got her arrested, whereupon she appeared & was discharged of the contempt by the Court. Bourn plain. Prigot defen. An. 24. Eliz.

Attachment widely gotten, discharged.

A Subpoena ad audiend. Judicium was delivered to the defendants brother, and the next by a ticket delivered to the defendant himself

A Subpoena to hear judgment served to the of defen. brother.

of the day of his appearance, & the Court held is good service. *Binnes* plaintiff, *Wrenne* defendant. *An. 24. El.*

Commission of rebellion discharged, because the former process was not entered in the Register, and the Clerk ordered to pay costs.

The defendant was apprehended upon Commission of Rebellion, where neither Attachment nor Proclamation of Rebellion is entered in the Register; therefore discharged of the Commission of Rebellion and contempt, and *Thomas Flower* one of the Clerks of this Court that made the Commission of Rebellion to pay to the defendant such costs for his vexation, as *Doct. Lewis* one of the Masters of this Court shall assess. *Hollingworth* plaintiff, *Harding* defendant, *An. 24. El.*

Husband bound that his wife shall dispose of 500 l. at her death.

The Bill is as well for certain Legacies given them by the late wife of the said *Kitchin*, and also to have the said *Huet* ordered not to release a Recognisance of 2000 Mar. wherein the said *Kitchin* is bound unto him in trust before Marriage with his said Wife, that she might by her Will dispose of 500 l. goods besides her Jewels, *Kitchin* demurred upon the Bill, and sued the said *Huet* in the Court of Requests to release the said Recognisance, and ordered if cause be not shewed by such a day, then a Subpoena to *Kitchin* to make a better answer, and to *Huet* not to release the Recognisance. *Avenant & al.* plaintiffs, *Kitchin & Huet* defendants, *An. 24. El.*

Two defendants the 1 disclaims Subpoena to hear judgement served, but on one the

The defendant desired to be discharged of Decree made against him, and one *Shepham* the last term, because he was not served with Process the last term to hear judgement. But because *Belfon* by his answer disclaimed; Therefore the Decree against him without Process served

decreed is just. Giles plaintiff, Bilson defendant. decree binds both.
An. 24. El.

The Bill was concerning certain copyhold lands, for which the plaintiff heretofore sued in the Lords Court before M. Golding Steward theer where the same upon hearing went against the plaintiff. Therefore if good cause be not shewed to the contrary by this day sevensnight, then the cause shall be dismissed. *Buning plaintiff, Kipping defendant An. 24. El.*

The suit was on the behalf of the Parishioners, as well rich as poor, for and concerning the yearly Almes or distribution supposed to be due by the Parson of the said Parish, of a Rie loaf and a red herring to every Parishioner on St. Andrews evening. But that it appears by a Record in the Exchequer, setting down the value of the said Parsonage, that there is 13 *sh.* 4 *d.* yearly to be distributed in viſuals at the same time to the poor of that Parish, but not to the Gentlemen and men of Nobility. And for that the defendant offereth to give yearly 16 *sh.* 8. *d.* in lieu of the said 13 *sh.* 4 *d.* to the poor of the said parish who stand in need thereof, Therefore day is given to the plaintiffs to shew cause why they should not accept thereof, or be dismissed. And after assent 40 *sh.* a year was decreed yearly to the poor. *Blmer and Smith Church-Wardens of Northwold in the County of Norfolk Plaintiffs, Scot Parson of the same Town Defendant. Anno 24. El.*

Parishioners sue their Parson at every years end to give a rie loaf & a red Herring.

The suit is to stay a suit at Law in a Writ of Dower made by the Defendant. for that the defendants wife had certain copyhold lands devised in lieu of dower, though devised no barre in law.

vifed unto her in lieu of her thirds at Law, which ſhe accepted of and enjoyed twenty years, and yet ſeeketh now to recover dower of the Frechold lands. The defendants demurre becauſe copyhold lands can be no bar of dower. But the Court thinks it no conſciencie ſhe ſhould have both; Therefore ordered to answer. *Lacy & uxor* plaintiffs, *Anderson & uxor* defendants. *An. 24. El.*

Juriſdiction of Cambridge not allowed.

The Defendant demurred becauſe he was an Univerſity-man in Cambridge, and therefore privileged; yet the plaintiff having his neceſſary witneſſes dwelling farr diſtant from the Univerſity, and no compulſary Proceſs lying there to force them to be examined, nor any Commiſſion to be awarded from thence; & alſo becauſe the plaintiffs witneſſes are *ſingulars teſtes*, and ſome of them are kinſfolk, which are not any witneſſes by the Civil Law: Therefore ordered that the defendant ſhall answer. *Praunc* plaintiff, *Hodilow* defendant. *Anno 24. Eliz.* This cauſe was after ordered, that after answer and witneſſes examined, the matter was diſmiſſed, and the plaintiff left to take his remedy before the Chancellour or Commiſſary of the Univerſity of Cambridge.

The plaintiffs witneſſes being beyond ſeas, an Injunction to ſtay proceedings.

The plaintiff ſuppoſed by his Bill, that the defendant knowing that his moſt principal witneſſes being beyound the Seas, hath brought an action upon the Caſe againſt him, and will give in evidence a note under the plaintiffs hand, whereas his witneſſes can prove it was made upon the defendants promiſe to take no more than was due; therefore an Injunction. *Swigo* plaintiff, *Hanbury* defendant. *An. 24. El.*

The

The Bill was as well for not tithing as for *Suites for tithes* evidence concerning the same tithes; and for *dismissed.*

that the matter of tithes hath been in the spiritual Court, and by prohibition brought to the Common Law, where it is most proper to be determined; Therefore the matter of not tithing is dismissed. *Pordall* plaintiff, *Goddard* defendant. *An. 24. El.*

The plaintiff caused certain witnesses to be examined in this Court, whereas there is no *witnesses examined in this* suit depending here but at the Common Law; *Court, no Bill* ordered to be suppressed, and never to be given *here depending* in evidence against the defendant or any claim- *dismissed and* ing by or under him. *Auger* plaintiff, *Betts* de- *suppressed.* fendant. *An. 24. El.*

The defendants were dismissed by the privilege of the University of *Oxford*, and the *Jurisdiction of* Plaintiff left to make his remedy there. *Wise* *Oxford allow-* plaintiff, *Frances Willis* President of *St. John's* Colledge in *Oxford*; and *Robert Kiblewhite* Fellow of the same house defendants. *Anno 24. Eliz.*

The defendants were dismissed, for that the Defendants dwell in the County Palatine of *Chester*, and the matter of the Bill is for a lease to be had of lands lying in the said County Palatine of *Chester*. *Millington* plaintiff, *Croxton* and others defendants. *An. 24. El.* *The Jurisdiction of Chester allowed.*

The plaintiff put in a Replication of two *upon a long and* skins of Parchment of frivolous matter, and *frivolous repli-* not fit to be rejoined unto, of purpose to put *cation, ordered* the Defendant to unnecessary charges, and *the defendants* therefore *Master Godfrey* being of Council *may go to Com-* with the defendants, desired his client might *mission without* not be compelled to put in a rejoinder, but *rejoynig there-* that unto.

that they may go to Commission with the same, & ordered accordingly. *Harrison* plaintiff, *Line & uxor* defendants. *An. 24. El.*

Suit to perform an award without order of this Court decreed.

The defendant moved to have the plaintiff's Bill dismissed, for that he sought to have an award performed, which was not made by Warrant or Commission of this Court; and for that also the plaintiff hath a Bond to perform the same award: and for that the defendant had received the money that was awarded by the same award, and the Bond was under the value, therefore ordered to performe the award. *Kennet* widow plaintiff, *Hornor* defendant. *An. 24. El.*

The suit for a lease paroll of a Parsonage.

The Suit was concerning a lease paroll, by the plaintiff claimed to be made unto him of a parsonage by *Robert Moon*, Father of the plaintiff deceased. The parties proceeded to issue, and the plaintiff desired to have an *Ejectione firme* staid, which is brought by the defendant ward upon a lease made unto him by the other defendant until witness be here examined; and ordered that counsel on both sides shall attend upon Wednesday next, and then farther order shall be taken herein. *Williams* plaintiff, *Mobne* defendant. *An. 24. El.*

Demurrer returned upon a Ded. potest: ordered to answer.

The defendant *Pry* having a *dedimus potest.* to take his answer, returned a demurrer, which demurrer being excepted to by the plaintiff's counsel, and not sufficiently maintained by the defendant's counsel: Therefore the defendant was ordered to make a better answer. *Perry* plaintiff, *Fry, &c.* defendants. *An. 24. El.*

The Bill as with an alias.

The Bill was *Goodwin* alias *Reignolds*, but the

the Subpœna was ad Testam Nicholai Gooding and the Subpœna without, only leaving out alias Reignolds. And hereupon the defendant got costs for want of a Bill as he supposed, and the Court ordered the costs and Attachment for not payment thereof should be discharged. Nicholas Gooding alias Reignolds plaintiff, Phillip Yard defendant. Anno 24. Eliz.

A Subpœna was served on the defendant to appear à die prox. futur. in tres septimanas, and this not when he should appear, and therefore moved by Mr. Ratheram the defendants Attorney (and the rather because the Bill is for 8. l.) to be discharged of the Attachments and ordered if it be true, the Attachment to be discharged, and the matter dismissed, which after was by a Master of the Court certified true; Therefore dismissed, & Attachment discharged.

Foreman & uxor plaintiffs, }
Gifford & uxor defendants, } An. 24. 25. Eliz.

It was moved by Master Solicitor generall in the defendants behalf, that the issue joyned between the parties in this Court, is only whether the lands claimed by the plaintiff be parcel of her dower recovered at the Common Law or no, and therefore meetest to be tryed by the Common Law; But Master Beaumont being for the plaintiff, alledged, that albeit the plaintiff hath recovered her Dower at law, yet the defendant being of great power in the Country, keeps her out contrary to the same recovery; Therefore an Injunction of this Court is awarded,

The plaintiff recovered her dower at comon Law, but by the potency of the defendant kept from execution, and relieved here.

**Jurisdiction of
Canterbury
over-ruled.**

warded, and the matter by order to be retained
Bracebridge plaintiff, Bracebridge defendant. *An.*
24. 25. *Eliz.*

The defendants refused to answer, for that
by the Charter of the City of Canterbury they
ought not to be impleaded out of the said City,
whereupon the answer being referred to the Mas-
ter of the Rolls, he thought not fit the Defen-
dants should be judges of their own cause; there-
fore they were appointed to make direct answer.
Then they shewed that they held the lands in
Fee farme of her Majesty, and therefore pray-
ed her Majesties Council may be called to it.
Ordered, if her Majesties Council shall not by
such a day shew good cause to the contrary,
then the plaintiff may reply and proceed not-
withstanding the defendants prayer. *Hovenden*
plaintiff. *Mayor & Communitas Canturbur.* defen-
dants. *An.* 24. & 25. *El.*

**Costs dischar-
ged upon Certi-
ficate of the
Mayor of Lid-
ford, of a com-
promise to be
had affirmed by
oath.**

The defendant got costs for want of a Bill,
and upon the Certificate of the Mayor and Bur-
gessees of Lidford in *Com. Devon.* under the
common Seal, that one Thomas Glanville Gent.
made oath before them that all matters after
the serving of the *Subpoena* were compromised
to him and one John Lugges, and that they ap-
pointed divers meetings, but no end was made.
Therefore costs discharged, and Process for the
same. *Gonding* plaintiff, *Spurwell* and others de-
fendants. *An.* 24. & 25. *El.*

**Grandfather
and Father be-
ing denizens,
Father & grand-**

The cause was, the grandfather and father
being strangers were made Denizens, the fa-
ther had issue a Son within the Realme, and
then the grandfather purchased lands, and the
Father died, and the grandfather died, and whe-
ther

ther the son should enjoy the lands, was the question. It was ordered that a Case should be made, and the same should be referred to some of the Judges. *Tarlink* plaintiff, *Dominus Wentworth* Defendant. *A. no 24, & 25 Eliz.*

Alice Skipkine was served with a *Subpœna ad testificand.* but no charges tendered unto her, as by *Affidavit* appears; and yet an Attachment was taken against her for not appearing. Therefore ordered a *Supersedeas* should be granted to discharge the Attachment. *William Gardiner* Plaintiff, *John Skipkany* Defendant. *Anno 25 Eliz.*

The plaintiffs Husband and she purchased lands jointly, and to the heirs of the Husband, and both of them levied a Fine to the defendant. But before the Queens silver was paid, the husband died, and the plaintiff made suit to the Lord Chief Justice of the Common pleas to stay the proceedings of the fine, who did so for a time, but after it passed; wherefore the plaintiff to have relief, exhibited her Bill in this Court, shewing that her husband had a great advancement by her marriage, and left her indebted, and nothing to maintain her self. The Defendant demurred, because the plaintiff may have remedy by Writ of Error to reverse the fine. But because the plaintiff is poor, and not able to sue without the quiet possession; Therefore ordered, if cause be not shewed to the contrary (on such a day) a *Subpœna* is granted against the defendant to answer; and an Injunction to continue her in possession. *Anna Halfhide* Plaintiff, *Edward wilkinson* Defendant. *Anno 25 Eliz.*

father dieth. The Question is whether the son shall have the lands?

Attachment against a witness discharged, because no charges tendered.

Husband and wife joint purchasers, the remainder to the heirs of the husband; he dies before the Queens silver was paid, and the wife sues to be relieved against the fine.

two cases in
law touching
copyhold refer-
red to the
Judges.

The questions touching Copyholders are two; the one, whether the Court, whereat the presentment of a forfeiture in felling of trees upon the premises by the late husband of the Defendant was made, and whereat the Copy whereby the plaintiff claims, was granted, being holden and kept: The second, whether the felling of Trees by the defendants late husband upon the premises without any direct custome, be a forfeiture or no? Ordered that two Cases shall be made, and the Opinion of the Judges shall be had thereon. *Clifton Miles* plaintiff, *Basset Widow* Defendant. *Anno 25 Eliz.*

Jurisdiction of
Lancaster al-
lowed.

The plaintiff hath brought up 24 of the defendants by *Subpoena*, to answer a Bill, surmising that certain Writings and Evidences concerning the said manor of *Horneby*, and other the Plaintiffs Lands in the County Palatine of *Lancaster* are come into their hands, whereas they never had any such; and therefore, and because matters arising in the said County Palatine are pleadable within the said County, or within the Court of her Majesties Duchy of *Lancaster*: It is ordered that the Defendants shall shew the same by way of demurrer upon their Oaths, and demanded judgment whether this Court will hold plea thereof or not, and thereupon the Defendants may depart for this time. And if the plaintiff shall not by Wednesday shew good cause, the matter shall be dismissed, *Dominus Morley & uxor* Plaintiffs, *John Mastro* and others the tenants customary of the Manor of *Horneby* in *Com. Lanc.* Defendants. *Anno 25. Eliz.*

Penrudd

Penruddock Plaintiff, *Coles* and others Defendant. *Confirm.*
The like to this in all points as is last
before touching the County Palatine of Lon-
caster. Anno 25 Eliz.

The plaintiff removed the matter by special
certiorare. And Master *Vernon* moved for the
plaintiff, that some Records and depositions in
the Star-chamber and the City of London, where
the matter hath been examined may serve here
for proofs of the plaintiffs surmise; and the
rather because some of the witnesses there ex-
amined are dead, and some others are beyond
the Seas: Therefore it is ordered it shall be so
as is desired. *Puckly* and others plaintiffs, *Bridg-*
es and others defendants. Anno 25 Eliz.

Depositions in
the Star-cham-
ber and in
London allow-
ed in this
Court.

One *Robson* Solicitor for the plaintiff in this
Case was served with a Subpœna to testify for
the Defendant, and refused the same; ordered
that he should not be examined. *Strelly Miles*
plaintiff, *Albany* defendant. Anno 25 Eliz.

A Solicitor
not to be exa-
mined.

Upon the hearing of the matter it appeareth,
that the lands in question have been in the de-
fendants and their possession, by whom they
claim by the space of eighty years; Therefore
ordered and decreed the Defendants to be dis-
missed. *Blackwel* plaintiff, *Simpson* and others
defendants. Anno 25 Eliz.

The Defendant in his answer confesseth the
having the Lease & deed, whereby the Plain-
tiff pretendeth to have a joynt-estate with him;
therefore ordered a Subpœna duces tecum be
awarded against the Defendant to bring the
same into the Court, to be seen and perused as
this Court shall think fit. *Gifford* plaintiff, *Trip-*
ony Defendant. Anno 25 Eliz.

Joynt-tenants
for years, the
one sueth the o-
ther for the
deed, and or-
dered to be
brought into the
Court.

Commissioners appointed to examine witnesses, undertake to arbitrate the cause by the consent of the parties, and such order decreed.
 Suit at Common Law against a privileged person discharged.

Demurrer in case the plaintiff is excommunicated, ordered to answer shewing an absolution.

Foreign plea without Oath is not allowed.

Consent.

The Commissioners appointed to examine witnesses, certified under their hand, that both parties submitted themselves to their end, and they both by their consents, ordered, &c. A Subpoena is awarded against the defendant to shew why that order or award should not be decreed, *Lovey Plaintiff. Chamberlen defend. Anno 25 El.*

The Plaintiff declared against the Defendant being a privileged person in an *Ejectione firme*, and day was given to the Defendant to answer peremptorily.

Eliz. Cutts wid. plaintiff.

Basilius Johnson Defend.

} *Anno 25 Eliz.*

The Defendant demurred because the plaintiff was excommunicated. The plaintiff after obtained Letters of absolution, and shewed the same in Court; therefore ordered the same to be allowed, and that the defendant putting in a perfect answer, and paying the charges of process of contempt which issued out against him be discharged thereof, *Amers plaintiff, Legg Defendant. Anno 25 Eliz.*

The Defendant put in a foreign Plea to a *scire facias* upon a Recognisance of 400 l. and not answering the same; ordered if the Defendant be not either sworn to the same Plea, or else put in a good plea by Friday next, a *nihil dicit* shall be entered. *Conyers plaintiff, Savil & Savil Defendants. Anno 25 Eliz.*

Slany Plaintiff, Cook defendant, is the like Case to the last before. *Anno 25, & 26 Eliz.*

The

The Defendant having in his favour a *Ded. Potestatem* to take his answer in the Countrey by reason of his great age, yet he returned a demurrer which he ought not to have done, but should have put in a direct answer, whereupon the plaintiff had a *Subpoena* against the Defendant to make a perfect answer: And upon oath of the Defendants great age he had a new *Ded. Potestatem* to take his answer, which the Plaintiff feared he would use for a delay, and put in another insufficient answer, and keep the possession of the prebend in Question; wherefore it is ordered by this Court, that if the Defendant do not return a perfect answer, a Sequestration shall be granted. Kerle & uxor plaintiffs, Lloyd defendant. Anno 25 Eliz.

The defendant may not demur having a Ded. potestatem. Upon a 2^d deduction he shall return a dilatory answer, then sequestration is granted.

A coppinghold tenement was taken jointly by William Malborne, John Jeffrey and Richard Evers, and agreed amongst them, that if any of them died, yet such as he assigned his part unto the same should be enjoyed. And for performance each entered bond unto the other; according to which agreement William Malborne assigned his part to the plaintiff and died: And ordered for the plaintiff and his heirs against the Defendants and their heirs. Watts plaintiff, Malborrow & Evans Defendants. Anno 25 Eliz.

Three takers of a coppinghold agree, assignme made by any of them shall be good, and ordered accordingly.

The custome for the Coppingholders of that Mannor was, whether these words, *sibi & suis*, would make an estate of inheritance, and was by order of this Court referred to a trial at the Common Law, and found for the plaintiff, and the coppingholder to make an Estate of inheritance, and decreed accordingly. Hide and o-

These words *sibi & suis*, custome make an estate of inheritance.

other customary tenants of *Abolsey* in the County of *Worcester* plaintiffs, *William Welsh* Defendant. *Anno 25 Eliz.*

The Plaintiffs Bill for that the defendant hath severed the Coppyholds from the Mannor whereof they are holden, would thereby defeat their estates. The defendant demurred, but ordered to answer and stay suit at Law. *Harrington* and others Plaintiffs, *Glascock* Defendant. *Anno 25 Eliz.*

The Plaintiff bargained with the Defendant, to buy of him a reversion of lands wherein one *Theodore Chapner* had an estate for her life for 500 l. to be paid before *Hollandide* next; which bargain or agreement was set down under the hand-writing of the Plaintiff, and before the day the plaintiff payed the Defendant 24 lib. parcel of the money. And after and before the day also the tenant for life died, and then the defendant refused to perform the bargain; and ordered the defendants answer should be referred to *Doct^r Hussy*, and if he finds the bargain confessed by the Defendants answer, then the Court will order the lands shall be assured. And after upon *Doct^r Hussy's* Certificate of the Defendants answer to be so; It was ordered the plaintiff should pay the money, and the Defendant assure the lands according to the bargain. *Butler* plaintiff, *Denton* Defendant. *Anno 25 Eliz.*

father su-
to have
s, &c. Sta-
dischar-
whereunto
sons were

The plaintiffs Bill was, for that the defendant by subtille practises drew the plaintiffs sons into divers Statutes and Bonds of 3000 l. at the least, for Silks and other stuffs of small value: But thought meet by the Court, that the sonnes them=

themselves being both of full age when they drawn by convention, be entered into the Statutes, and now, shall be parties to the suit, Savil plaintiff, Wolsall and thought meet others Defendants. Anno 25 Eliz. the sons being

The plaintiff examined divers witnesses to prove a contempt, but it seemed unto this Court should be made the plaintiff had not made any full proof of the parties. the said contempt, neither if he had, that yet the A contempt plaintiff bringing the matter of contempt onely without a Bill to be heard upon an Affidavit, could not have cannot be heard any order without a Bill exhibited first in that upon Affidavit behalf for the interest of the goods and leases in only. question. Anthony Hartford Plaintiff, Mariba Hartford widow Defendant. Anno 25 Eliz.

The plaintiff seeks to be relieved against a mortgage of lands made by their Ancestors for sought to be relieved against a small sum of money. But for that it seemed mortgage made to this Court, the Defendants and those by 40 years before whom they claim have been in possession by but dismissed the space of 40 years, therefore dismissed. Sedgwick & uxor Plaintiffs, ap Evan and others defendants. Anno 25 Eliz.

John Nicholson made Oath he hanged the A Label hanging Label of a Subpoena at the plaintiffs suit on the ed on the street door of the house of Master George in White-gers door, w Fryers, wherein as two of the said Master George the defendant his servants affirmed, the said Defendant was, is, and an A who had not appeared; therefore an Attachment for attachment for ment is granted. Woodward plaintiff, Joanes de not answering defendant. Anno 25 Eliz.

The Defendant shewed a Certificate under Jurisdiction the Seal of the University of Oxford, whereby Oxford. it appeareth that he is a Cook of Corpus Christi Colledge, and ought not by the priviledge of the said University to answer any cause out of

the same University for any matter of cause, except it be for felony, Mayhem or Franck-tene-ment; therefore ordered that the Defendant shewing the priviledge by way of demurrer upon his oath be dismissed. But afterwards upon information that the Bill was for Franck-tene-ment, the matter is retained; but after, because it was under 40 *sh. per annum*, it was dismissed. *John Yate plaintiff, Daniel Alletor, alias Christian Defendant. An. 25. El.*

Costs granted to the plaintiff who died, and ordered the Executors should receive the costs. Jurisdiction of Oxford allowed.

Motion was made by the plaintiffs Executors to have costs, which were granted to their Testator being the Plaintiff, and now dead. And ordered accordingly. *Hawly plaintiff, Bodiley and Rosse Defendants. An. 25. El.*

The Defendant had the priviledge of Oxford under the Seale of the University, that he is a Fellow of New Colledge in Oxford Lideard plaintiff, *Bryly Batchellor of Arts defendant. An. 25. El.*

The defendant brought an action of trespass against the plaintiff for coming to his house to serve subpoena and was stayed by injunction.

The plaintiff went to the defendants house to serve him with a Subpoena out of this Court, for which coming over his ground & entering into his house, the defendant brought an action of trespass against the plaintiff, *Quare domum & Clim fregit.* And upon motion of Serjeant Walmeley the action of trespass was stayed by Injunction. *Brake plaintiff, Stapleton defendant. An. 25. El.*

The defendant appeared gratis, on Attachment because plaintiff

An Attachment went forth against the defendant upon Affidavit made by the said plaintiff, that the Defendant strook him, and brake his head when he served the Subpoena upon him; The defendant hearing of the Attachment, appeared gratis, and utterly denyed that he strook the

plaintiff, or that he was served with any Sub- when he served
na, but only with a biller in paper, and a Subpæna, the
sued the plaintiff might exhibit his Interro- defendant ac-
atories whereupon he might be examined; & nued the beat-
tered he should do so before wednesd ay, or ing, and order=
the defendant is discharged. Osborne plain- ed the defen=
Tutbell defendant. An. 25. El. dant shall be

The plaintiff by his Bill endeavoureth to pre- examined.
the defendant to avoid a lease assigned by The defendant
gates one of the plaintiffs, to one Dawkes, goes about to a-
which the Plaintiffs are bound by a Covenant void a lease
and Bond to the said Dawkes for enjoying, but which the plain=
cause the defendant is no wayes privy to the tiff assigned to
and nor Covenant, it is ordered to be dismis- one, and is bound
if the plaintiff do not shew some other cause to warrant it, &
sufficient to divert the Court. Woodward and therefore sues
sues plaintiffs, Langley defendant. An. 25. the defendant,
but is dismissed.

The Bill was for arrearages of six pounds
for two years reserved upon a Lease for
an, of certain lands, the reversion whereof
plaintiff, purchased by fine, but had never
en of the rent, and therefore no remedy by
w. And ordered the defendant should pay
arreages, and continue the payment of the
after, if he shewed not good cause to the
jury. But the plaintiff was allowed no re-
pence for waste before the defendant atturn;
until atturnment he is ordered to do no
le, Samms plaintiff, Strudbaugh defendant.
25 El.

The Plaintiff sueth to have a rent of three
pounds, seventeen shillings two pence reserved A suit for a
on a lease for years of certain lands whereof proportionment
plaintiff hath 47 acres, and the Defendant, of a rent,

or

or some other by his assignment 67 acres apportioned. The Defendant now having got the reversion of the whole, and also to be relieved of a Condition of not payment of the rent, and upon the defendants affirmation of the interest of the lease of the 67 ~~years~~ was one Tracey; therefore ordered the plaintiff to exhibite a new Bill against the said Tracey the Defendant: And until that matter should be heard, the plaintiff should pay only the rent to the defendant, which if he did, is to be discharged of the condition. *John plaintiff, Glemham defendant. An. 25. El.*

A Fine taken for a copyhold, the Lord would avoid it, because granted at a Leete out of the Mannor, ordered for the plaintiff.

Land passed to the wife for life, after to his three sons equally, the one to be heir to the others.

The plaintiff took up Coppyhold lands of the defendant, and paid Fine unto him for same, which the defendant would avoid, because the same was granted at the Leete holden of the Mannor, whereof the Coppyholders parcels; but ordered the Coppyholders to enjoy the lands. *Markes & Markes plaintiff, Suliard defendant. Anno. 25. El.*

The matter was reduced to a Case in Law *viz. Thomas Fordham to his use in Fee before the Statute of 27. H. 8. of certain houses devised his houses to his wife for life, and after her decease to remain to John, Thomas Robert his sonnes, to be divided equally, each one to be others heir if any deceased dieth before 27 H. 8. The wife entered dieth, and after Thomas and Robert dye. Ruled by Justice Meade and Periam, that should have the whole. John Fordham plaintiff, William Fordham defendant. An. 25. El.*

Commission of Rebellion a-

The wife was apprehended by a Commission of Rebellion, for that her husband & she

answered the plaintiffs Bill, and being *gainst husband*
 was carried bound to prison, and kept *and wife, the*
 in very strict sort; although her husband *wife alone is*
 brought in to answer, without whom she *taken and car-*
 compelled to answer: Therefore it is or- *ried to prison,*
 dered that the wife be discharged until she and *but discharged*
 husband may be brought together to ar- *with costs till*

And in respect the wife was unorderly *her husband be*
 in without her husband, and so hardly *taken first.*

with, the plaintiff shall pay unto her
 as the court shall award. *Rone Widow*

vs. Burne & uxor Defendants An. 24. &
El.

Upon a Warrant from the Sherif of Derby, *A warrant of*
 of the persons being poor persons, were *the peate to*
 brought up before the Barrons of the Exchequer *bring the parties*
 the Peace, which seemeth to be very unor- *before the Barons*
 dered and procured, but to trouble the *of the Exchequer,*
 affairs; It is therefore ordered that the Cur- *discharged,*
 for that County shall make a *Supersedeas by Supersedeas,*
 the Peace. *Booth and others Plaintiffs John*

Defendants, Anno 25. 25.

The Defendant was taken upon a Commis-

sion and brought in and committed to the *The defendant*
 because he had sate out all the proceed- *taken upon com-*
 ings and ordinary professes of contempt. *mission of re-*
 plaintiff, *Edmond Webb defendant. An. 25.* *bellion is com-*
El. *mitted to the*

The plaintiff had a lease of Lands which en- *Fleet.*
 in *Michaelmas*, and by his Bill doth surmise *A lease paroll*
 another lease by paroll made by the De- *claimed and de-*
 fendant in reversion, whereof he had no wit- *nied by the de-*
 ness. The Defendant denied it in his an- *fendant, answer*
 therefore ordered to be dismissed. Ni- *for want of*
shots proof dismissed.

ehols plaintiff, *Lonell* defendant. *Ab.* 25. & 26. *El.*

*An Inholder
sued for money
taken out of a
Carriers pack
in his house,
bath an Injun-
ction.*

The defendant sent money into the Court by a Carrier, who trusted the same in a pack, and came with one *Wood* another Carrier into the plaintiffs house being an Inholder, *Wood* and another Carrier did rise in the night and took away the Money, and the next morning both the Carriers departed together, and after *Wood* was apprehended and sent to New-Gate, and there died. And the Defendant sueth the plaintiff, being an Inholder, at the Common Law, for the Inholders by the Custome of *England* ought lawfully to keep their Guests goods, yet an *Injunction* is granted to stay the suit at the Common Law. *Clark* plaintiff, *Colibere* defendant. *Ab.* 25. 26. *El.*

*Costs granted to
a witness to
testifie after
publication.*

The plaintiff is adjudged to pay the Defendant thirty shillings costs, a witness being called in the Court on the behalf of the plaintiff to testifie after publication is granted. *Killess* plaintiff, *Stamper* defendant. *Anno* 25. & 26. *El.*

*Costs against a
Clerk that mis-
took a Subpoena.*

A *Subpoena ad rejuvendum* was be spoken of to *Lomley* a Clerk in the *Subpoena* office, who made the same *ad respond.* whereupon the Defendant got 26 sh. 8 d. costs, which the plaintiff paid, and ordered *Lomley* to pay it him again. *Frost* plaintiff, *Couch* defendant.

*Oath taken be-
fore a Mayor, &
by him certified
for serving a
Subpoena, re-
jected.*

Forasmuch as the Court was this day informed on the defendants behalf that the plaintiff hath upon a Majors Certificate of the serving of a *Subpoena*, procured out an *Attorney* against the Defendant without oath taken in this Court for serving of Process as it ought to be.

therefore ordered the defen. be discharged of Attachment, and bound for his appearance. *Lea* plaintiff, *Stanbury* Defendants. *Anno* a page 51.

Prannell Defendant made oath he was served with a Subpœna to testify for the plaintiff contrary to an order of this Court; therefore an Attachment is awarded against the plaintiff. *Prannell* and others Defendants. *the 26, El.*

The Bill was against the Defendants as ex-
cessors to have them assent to the Plaintiff to
bring into a lease devised unto him by the Tes-
tator. The Defendants took a Commission to
examine their answers in the Countrey, and ordered
the Defendants shall not alien, commit waste;
leave the rent unpaid during the suit. *Carter*
Defendant, *Capper* and others Defendants. *An. 26.*

Thomas Llood made oath the Defendants son
confessed his Father was served with a Subpœna,
which hath not appeared; therefore an Attachment
granted. *Blake* plain. *Birde* def. *An. 26. Eliz.*
The matter of a Bill was to stay the sure of
Recognisance of 2000 l. knowledged to the
Lord Keeper *Bacon*, The Defendant confessed
said Recognisance was acknowledged but
refused to the Lord Keeper *Bacon* for the pre-
servation of the inheritance of the land in the
possession of one *William Waller* who acknowledged
Recognisance, whereof a recovery is had to
the plaintiff a lease lately made, the first lease being
made by the Lord *Bacon*'s privy, and the in-
heritance settled as before by a limitation of use,
and the defendant *Waller* is in reversion, and
not

The defendant
served with a
Subpœna to tes-
tify for the
plaintiff, which
is contrary to
the order of this
Court.

A Legatee sueth
the Executor to
consent to the le-
gacy.

upon the sons
Confession the
father was ser-
ved with a Sub-
pœna, Attach-
ment granted.
A Recognisance
knowledged to -
preserve the in-
heritance of land
in the blood,
ordered to stay
proceeding at the
Common law.

not prejudiced. It is therefore ordered to be
proceedings upon the Recognisance, and
said Sir Nicholas Bacon and Nathaniel Bacon,
though named as defendants to treat of the
matter, William Waller and Thomas Waller plain-
tiffs, Nicholas Bacon miles. Nathaniel Bacon
executors of Nicholas Bacon militis nuper custos
magni Sigilli, & John Waller Defendants. An.
26. El.

A protection
from the Queen
wherein is defi-
red an Injuncti-
on to be granted
to stay such suits
as will concur
with the rest of
the creditors.
which is granted
accordingly.

The Queen granted a Protection to Wood-
cock, Napton and Sewell to the end they might be
better able to pay their debts to all their cre-
ditors. By which protection her Majesty's
will is that an Injunction be granted out
of this Court against all such as should implead
the said Woodcock, Napton and Sewell, and
content themselves with the aforesaid rate. And
because the defendants do commence suit at the
Common Law, and do not content themselves
with the aforesaid agreement, therefore an In-
junction is granted it cause be not shewed to the
contrary Ramsey miles, and others creditors of
Woodcock, Napton and Sewell plaintiffs, Brabson
others Defendants. An. 26. El.

upon an insuffi-
cient answer a
Subpoena to
make a better,
and to pay the
charge of the
copy of the first
answer.

The Bill was for certain Coppyhold and
Freehold land leased by paroll, the Defendant
made an unsufficient answer, which by order
is referred to Doctor Carewe, and if he certify
the answer insufficient, then a Subpoena is awarded
to make better answer, and to pay the charges
of the Copy of the first answer. Collins
plaintiff, Meade and Whiddor defendants. An.
26. El.

Two named in a
Subpoena, the

Both the defendants were named in a Sub-
poena, but one only served; and yet the other

for the Subpœna, and thereupon got costs, which one served, the
 on oath of this matter is discharged. How= one gets costs:
 d the plaintiff, *Armorer & Litbourne* defendants. but discharged,
 Anno 26, El.

An Injunction is granted to stay the Defen= Injunction for
 plaintiffs proceedings in the Kings Bench for a not paying the
 sum of 200 l. for not paying the Kings Fine. Kings fine.
 plaintiff, *Greves* defendant. Anno 26:

A Suit for a
 Upon hearing the matter this present day, it pair of gloves
 appeareth to this Court, that the cause of the as a rent-ser-
 it was for a pair of gloves which the plaintiff vice,
 is sometimes for a rent; and the plaintiff made proof

that the same had been long time paid, but could
 not know for what lands the gloves are to be
 paid. And ordered by consent to a triall at Law,
 where it shall be admitted the gloves are to be
 paid, as a rent-service for a tenement whercon
 at *Wussfield* dwelleth. And as it shall fall upon
 the plaintiff, this Court will take order. *Chetwyne*
 plaintiff, *Walker* widow, and *Walker* defendants.
 Anno 26, El.

The Defendant was served with a Subpœna *A Master of the*
 in the name of *Langell* without addition, and Chancery served
 it was contented to answer so he might have a with Subpœna
adimus potestatem to take his answer in the without his ad-
 country, dwelling at *York*, where he is Chan- dition is content
 cellon to the Arch-Bishop; therefore ordered he to answer, so he
 should have a Commission to take his answer. may have a ded.
 plaintiff, *Longber* Doctor of the Law, potest.
 one of the Masters of this Court, defendant.
 Anno 26, El.

Upon oath made that *Tash* did strike the upon Attach-
 plaintiff when he served the Subpœna upon him; ment that the
 is ordered that an Attachment be awarded defendant did
 against beat the plaintiff

upon serving a
Subpœna. At-
tachment is
granted.

Ejectione firme
brought against a
witness to take
away his testi-
mony, stayed.

Nuisance com-
plained of for
stripping the wa-
ter course to a
mill.

Jurisdiction of
Wales not al-
lowed.

against him to appear and to be examined up-
Interrogatories touching the contempt, a
not to depart after his examination until he
licensed. *Ruffin* plaintiff, *Heyward & uxor*
Tash defendants. An. 26. El.

Thomas Angrome as lessee of *Lawrence A*
grome brought an *Ejectione firme* against
Thomas Donwell and others, which *Thom*
Donwell is one of the principal witnesses
the plaintiff to produce, to take away his testi-
mony; therefore ordered, if the suit at
Common Law against the said *Donwell* be
stayed or withdrawn, that then this Court w
order an Injunction for stay of the Defenda
suit at Common Law. *William Angrome* plain
Lawrence Angrome and *Thomas Angrome* defe
dants An. 26. El.

The Bill was to be relieved of a Nuisan
committed by the defendant to the plaint
Mill by erecting a new Mill, & turning or le
ring the water-course from serving the plaint
Mill; but for that the plaintiff since the B
exhibited had brought an Assize of Nuisance
Law: Therefore the cause is dismissed, if cau
be not shewed. *Osburne* plaintiff, *Barter and Go*
dine defendants An. 26. El.

The plaintiff exhibited his Bill into this Cou
touching lands in the County of *Worcester*, t
defendant upon complaint made to the Counc
of the *Marches of Wales*, called the plaintiff b
fore them, & there he was enjoined not to pr
ceed in this Court; And ordered upon Affidav
made upon serving of Process, that an Attac
ment go out against him. And if the plaintiff sh
be at any time molested for suing in this Court

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John
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tenant
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then an Attachment against the Defendant for that contempt. *Croft* plaintiff, *Acton* and others defendants. *An. 26 El.*

It was resolved upon a Case referred to the Judges, that if a woman Coppyholder take a husband who commits waste, this is a forfeiture of the wifes estate, after the death of the husband. And that a coppyholder tenement being parcel of the Mannor granted by coppy at a Court holden for another Mannor, is void.

Sir Jervis Clifton Knight, and *George Clifton* plaintiffs, *Elizabeth Bassett* widow defendant. *An. 26 El.*

Upon Master Rotherams motion, witnesses examined in the Star-Chamber between *Sir Thomas Chamberlain* and *William Bubb*, were allowed to be used in this Court. *English* plaintiff, *Chamberlain* and *English* defendants. *Anno 26 Eliz.*

Witnesses examined in Star-Chamber between other parties used in this Court.

One *Robert Barker* coming into the Queens Majesties house of White-hall to serve the defendant, being an officer there, with a Subpœna at the plaintiffs suit; the defendant caused one of the Knight-Marshalls men to carry the said Barker to the Marshalsey where he remaineth in prison, and cannot be relieved unless the plaintiff will be bound to proceed no further in this suit. Therefore a *Corpus cum causa* awarded. *Sparks* and others plaintiffs, *Horae* defendant. *An. 26 El.*

One that served a Subpœna is the Court at Whitehall committed to the Marshalsey, therefore a Corpus cum causa is granted.

John Gwst made Oath that he served a Subpœna on the defendant, and two of his men or tenants, and the defendant did beat him with a staff, and struck out two of his Teeth, and hurt him in the face in divers places. Therefore

He that served the Subpœna was beaten.

an Attachment is awarded against the Defendant. *Giles* plaintiff, *Lackington* Defendant. *Anno 16 Eliz.*

Suit against a Sheriff for an escape dismissed and retained again, because the defendant may claim conscience of plea.

The matter of the Bill was to be relieved for an escape, for that the defendants being Sheriffs of York had arrested one *Newby* at the plaintiffs suit, and let him go before any judgment given upon the same arrest, or upon the action thereupon commenced. And because a matter of escape is merely determinable at the Common Law, and the rather being before judgment, because no certainty appears, but the damages ought to be assessed by the Jury, therefore dismissed. *Vau* for plaintiff, *Maude and Best* Defendants. *Anno 26 Eliz.*

Conusee upon an extent, sue to the Lessees for years, to know the certainty of their rents, days of payments, and term.

Motion was made that the Defendants might make a better answer, for that they being lessors of certain lands, whereof the plaintiff hath an extent by a Recognizance after their leases, the Defendants shew not by their answers what the rents, times of payments, and certainty of their terms are without the knowledge, whereof the plaintiff is remediless. And ordered that counsel of both sides should be present on Saturday, and then order shall be taken touching the answer. *Fisher* plaintiff, *Foxe* and others defendants.

Surmises upon a Prohibition to be proved within six months.

It was informed on the defendants behalf, that the plaintiff about six moneths past obtained a prohibition out of this Court for stay of the defendants proceedings in the Spiritual Court for tythes, upon surmise that part of the land out of which the tythes were demanded, were Chantry Lands, and discharged of Tythes in the Chaurtries hands, and so by the Statute ought to be in his. And that some other part of the

the lands is barren heath and waste Grounds. And the plaintiff had not made proof of his surmises, therefore the defendant desired a consultation, with his charges according to the Stat. and referred to Doct. *Berkley* to consider whether the plaintiff had proved his surmises within 6 months. *Bullock* plaintiff, *Wood* defendant. *An. 26 El.*

The defendant demurred to a Bill exhibited In a Bill to examine to examine Witnesses in perpetual memory, *wine witnesses* wheras the defendant should not have demurred in perpetual memory, one may answer to examine, or shewed there by sufficient cause why witnesses should not be examined, and leave it to the consideration of the Court to judge whether the cause be sufficient or no; Therefore ordered the defendant shall withdraw his demurrer, and put in an answer, and thereby either assent to such examination or thereby shew cause to the contrary. *South* plaintiff, *Perry* defendant. *An. 26 El.*

The plaintiff served the defendant to appear, and then arrested the defendant into the Marshalsey contrary to the ancient Jurisdiction of this Court, for the free coming and returning. Therefore it is ordered a *Supersedeas* be awarded to discharge the defendant of his arrest, and the Warden of the Fleet is to apprehend the plaintiff, and to bring him into the Court to answer his contempt. *Tarner* plaintiff, *Randall* defendant. *An. 26 El.*

The plaintiff was sworn in Court that he was not assessed in Subsidy the last subsidy, nor is of ability to follow this suit; therefore he is admitted in *forma pauperis* *Warr & uxor*

The plaintiff serving the defendant to appear and then arresting him a *Supersedeas* to discharge him, and a warrant to the Warden of the Fleet to take the plaintiff.

Forma pauperis.

No examination
allowed in a
cross suit after
publication in
the first.

Tenant-right in
Yorkshire
maintained.

plaintiffs. Middleton defendant. Anno 26 Eliz.

After witnesses examined and published in another suit wherein the now defendant was plaintiff against the now plaintiff, then defendant upon the same title for the land in question. The now plaintiff was not allowed to examine witnesses. *Markham* plaintiff, *Markham* defendant. Anno 26 Eliz.

The plaintiffs exhibited their Bill to be relieved for certain lands parcel of her Majesties Mannor of Dent in the County of York, which the plaintiffs hold of the nature and kind of tenants right, and the defendants go about to raise new customes of tenant-right, and do disturb the plaintiffs possession. Forasmuch as it is well known to the Court that the tenant-right is a great number of mens Cases, and much to be favoured in respect of their good and necessary service upon the borders upon any occasion; therefore an Injunction is awarded for the Plaintiffs quiet possession. *Harper and Greenwood* Plaintiffs, *Middleton and Banbridge* defendants. Anno 26 Eliz.

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F I N I S.

E. J. M.
3/3/03